

To access the Agenda and Backup Materials electronically, go to www.gjcity.org



**CITY COUNCIL AGENDA
WEDNESDAY, APRIL 2, 2014
250 NORTH 5TH STREET
6:30 P.M. – PLANNING DIVISION CONFERENCE ROOM
7:00 P.M. – REGULAR MEETING – CITY HALL AUDITORIUM**

To become the most livable community west of the Rockies by 2025

Call to Order
(7:00 p.m.)

Pledge of Allegiance
A Moment of Silence

Presentation

Update on Enterprise Zones – Kjersti Litzelman from the Incubator
[Supplemental Documents Presented](#)

Proclamations

Proclaiming April 2014 as “Child Abuse Prevention Month” in the City of Grand Junction
[Attachment](#)

Proclaiming April 2014 as “Month of the Young Child” in the City of Grand Junction
[Attachment](#)

Proclaiming April 2014 as “Donate Life Grand Junction Month” in the City of Grand Junction
[Attachment](#)

Proclaiming April 2014 as “National Autism Awareness Month” in the City of Grand Junction
[Attachment](#)

Revised April 3, 2014

*** Indicates Changed Item*

**** Indicates New Item*

® Requires Roll Call Vote

REVISED

Proclaiming April 16, 2014 as “National Health Care Decision Day” in the City of Grand Junction [Attachment](#)
[Supplemental Documents Presented](#)

Certificate of Appointments

To the Commission on Arts and Culture

To the Grand Junction Regional Airport Authority

Council Comments

Citizen Comments

***** CONSENT CALENDAR ***®**

1. **Minutes of the Previous Meeting** [Attach 1](#)

Action: Approve the Minutes of the March 19, 2014 Regular Meeting

2. **Setting a Hearing for the Vacation of Portions of Cannell and Elm Avenue and Adjacent Alley Rights-of-Way for Colorado Mesa University** [File #VAC-2014-40] [Attach 2](#)

Request to vacate portions of Cannell and Elm Avenue and adjacent alley rights-of-way for Colorado Mesa University to facilitate the continued westward expansion efforts planned for the campus.

Proposed Ordinance Vacating Portions of the Cannell and Elm Avenue and Associated Alleys Rights-of-Way and Retaining a Utility Easement Located in the Colorado Mesa University Area

Action: Introduce a Proposed Ordinance and Set a Public Hearing for April 16, 2014

Staff presentation: Scott Peterson, Senior Planner

3. **Purchase a Single Axle 4x2 Hook Lift Truck with a 5 Yard Dump Body and Snow Removal Equipment** [Attach 3](#)

This request is for the purchase of a scheduled equipment replacement of a single axle 5 yard dump truck with snow removal equipment. The purchase proposed is a hook lift truck with a separate dump body and snow removal equipment which can be interchanged at any point. Other versatile pieces of equipment will be added in the future that can be used with this same truck such as water truck, flat bed, stake bed, or any other needed body options.

Action: Authorize the City Purchasing Division to Purchase a Single Axle 4X2 Hook Lift Truck with a 5 Yard Dump Body and Snow Removal Equipment from Hanson International Kois Brothers Equipment for \$149,015

Staff presentation: Jay Valentine, Internal Services Manager
Darren Starr, Streets and Solid Waste Manager

***** END OF CONSENT CALENDAR *****

***** ITEMS NEEDING INDIVIDUAL CONSIDERATION *****

***4. **Grand Valley Catholic Outreach Fee Request** [Attach 4](#)

A request to have the City pay certain development fees for Grand Valley Catholic Outreach's proposed 24 residential units adjacent to St. Martin Place on Pitkin Avenue.

Resolution No. 09-14—A Resolution Authorizing the City Payment of Certain Development Fees for the Grand Valley Catholic Outreach's Proposed St. Martin Place II, Located at 221 Pitkin Avenue

®Action: Adopt Resolution No. 09-14

Staff presentation: Tim Moore, Deputy City Manager
Kathy Portner, Economic Development and Sustainability

5. **Purchase 10 CNG Fleet Replacement Vehicles** [Attach 5](#)

Authorize the City Purchasing Division to purchase 1 CNG One Ton Pickup Truck, 3 CNG Utility Trucks, 4 CNG Half Ton Pickup Trucks and 2 CNG Tandem Axle Dump Trucks in the total amount of \$623,859.12 from the vendors detailed in actions A, B, C, and D.

Action: Authorize the City Purchasing Division to Purchase Ten Motor Vehicles and Equipment from Specified Vendors for a Total of \$623,859.12 as the Same are Detailed Below in Parts A, B, C, and D of this Agenda Item

Part A: Authorize the City Purchasing Division to Purchase a 2015 Ford F350 CNG Pickup with a Snow Plow, V Box Spreader, and Arrow Board from AutoNation Ford Littleton, Colorado in the Amount of \$52,685

Part B: Authorize the City Purchasing Division to Award a Contract to Purchase 3 CNG Powered $\frac{3}{4}$ Ton Utility Trucks from Johnson Auto Plaza in the Amount of \$115,740

Part C: Authorize the City Purchasing Division to Purchase 4 CNG Half Ton Pickup Trucks from Barbee's Freeway Ford in the Amount of \$118,752.12

Part D: Authorize the City Purchasing Division to Purchase Two CNG Tandem Axle Dump Trucks with 13 Cubic Yard Dump Beds from Trans West/McDonald of Grand Junction in the Amount of \$336,682

Staff presentation: Jay Valentine, Internal Services Manager

6. **Public Hearing—2014 Supplemental Appropriation Ordinance** [Attach 6](#)

This request is to appropriate certain sums of money to defray the necessary expenses and liabilities of the accounting funds of the City of Grand Junction for major capital projects.

Ordinance No. 4625—An Ordinance Making Supplemental Appropriations to the 2014 Budget of the City of Grand Junction

®Action: Hold a Public Hearing to Consider Final Passage and Final Publication in Pamphlet Form of Ordinance No. 4625

Staff presentation: Jodi Romero, Financial Operations Director

7. **Public Hearing—Kelley Drive Rezone, Located at 2607 and 2609 Kelley Drive** [Attach 7](#)
[File #RZN-2014-59]

Request to rezone two parcels, totaling 2.749 acres located at 2607 and 2609 Kelley Drive from an R-R (Residential Rural) to an R-1 (Residential 1 du/ac) zone district.

Ordinance No. 4626—An Ordinance Rezoning 2.749 Acres from R-R (Residential Rural) to R-1 (Residential 1 DU/AC) Located at 2607 and 2609 Kelley Drive (Kelley Drive Rezone)

®Action: Hold a Public Hearing to Consider Final Passage and Final Publication in Pamphlet Form of Ordinance No. 4626

Staff presentation: Brian Rusche, Senior Planner

8. **Community Solar Garden Subscription Agreement** [Attach 8](#)

Ratify the final agreement with Fresh Air Energy VIII, LLC (Ecoplexus, Inc.) for the City to be a subscriber to the Pear Park Community Solar Garden “Solar Garden” or “CSG”.

Action: Ratify the Final Community Solar Garden Subscription Agreement

Staff presentation: Kathy Portner, Economic Development and Sustainability
John Shaver, City Attorney

***9. **Public Hearing—Emergency Ordinance Amending Ordinance No. 4618** [Attach 9](#)

On February 19, 2014 the City Council adopted Ordinance No. 4618 regulating certain panhandling activities in public places. Enforcement of Ordinance No. 4618 has been stayed due to litigation. The City became a party to the action on or about March 25, 2014.

The proposed Emergency Ordinance amends and/or eliminates some of the restrictions on panhandling in an effort to protect the public’s interest and resources from being expended in unnecessary litigation.

Ordinance No. 4627—An Emergency Ordinance to Amend Ordinance No. 4618 Regulating Panhandling Activities in Public Places

®Action: Approve Proposed Ordinance and Declare an Emergency and Making the Ordinance Effective Immediately

Staff presentation: John Shaver, City Attorney

10. **Non-Scheduled Citizens & Visitors**

11. **Other Business**

12. **Adjournment**

Grand Junction

State of Colorado

PROCLAMATION

- WHEREAS,** *preventing child abuse and neglect is a community problem that depends on involvement among people throughout the community; and*
- WHEREAS,** *child maltreatment occurs when people find themselves in stressful situations, without community resources, and don't know how to cope; and*
- WHEREAS,** *the majority of child abuse cases stem from situations and conditions that are preventable in an engaged and supportive community; and*
- WHEREAS,** *child abuse and neglect can be reduced by making sure each family has the support they need to raise their children in a healthy environment; and*
- WHEREAS,** *child abuse and neglect not only directly harm children, but also increase the likelihood of criminal behavior, drug and alcohol abuse; and*
- WHEREAS,** *all citizens should become involved in supporting families in raising their children in a safe, nurturing environment; and*
- WHEREAS,** *effective child abuse prevention programs succeed because of partnerships created among social service agencies, schools, faith communities, civic organizations, law enforcement agencies, and the business community.*

NOW, THEREFORE, I, Sam Susuras, by the power vested in me as Mayor of the City of Grand Junction, do hereby proclaim April, 2014 as

"CHILD ABUSE PREVENTION MONTH"

in the City of Grand Junction and call upon all citizens, community agencies, religious organizations, medical facilities, and businesses to increase their participation in our efforts to prevent child abuse, thereby strengthening the communities in which we live.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Grand Junction this 2nd day of April, 2014.



Sam Susuras
Mayor



Grand Junction

State of Colorado

PROCLAMATION

WHEREAS, the Partnership for Children and Families along with other local organizations in conjunction with the National Association for the Education of Young Children, are celebrating April as the Month of the Young Child; and

WHEREAS, these organizations are working to improve early learning opportunities, which are crucial to the growth and development of young children and to building better futures for everyone in this Community; and

WHEREAS, all young children and their families across the country, state, in Mesa County, and the City of Grand Junction deserve access to high-quality early education and care; and

WHEREAS, in recognizing and supporting the people, programs and policies that are committed to high-quality early childhood education as the right choice for children.

NOW, THEREFORE, I, Sam Susuras, by the power vested in me as Mayor of the City of Grand Junction, do hereby proclaim the month of April, 2014 as

“MONTH OF THE YOUNG CHILD”

in the City of Grand Junction and urge all citizens to recognize and support the needs of young children in our community and work toward high-quality early childhood education for all children.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Grand Junction this 2nd day of April, 2014.



Sam Susuras
Mayor



Grand Junction

State of Colorado

PROCLAMATION


- WHEREAS, *National Donate Life Month creates an important opportunity to educate Grand Junction residents about the need for organ, eye, and tissue donation; and*
- WHEREAS, *tens of thousands of Grand Junction and Colorado residents have chosen to register as organ, eye, and tissue donors—a decision that reflects deep commitment to one another; and*
- WHEREAS, *since 1988, nearly 2,500 Coloradans have donated lifesaving organs after death to patients in need; and*
- WHEREAS, *despite the profound generosity of these donors, 2,400 Colorado men, women, and children continue to wait for a lifesaving organ transplant; and*
- WHEREAS, *together, we can respond to the shortage that keeps thousands of patients from receiving lifesaving organs; and*
- WHEREAS, *we can further improve lives through the lifesaving and healing gifts of eye, tissue, bone marrow, and blood donation; and*
- WHEREAS, *Donor Alliance and the Donate Life Colorado community call upon our state's health care professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to join forces to boost the number of organ, eye, and tissue donors throughout our state; and*
- WHEREAS, *residents of Grand Junction and the Western Slope are encouraged to learn the facts about organ and tissue donation, consider signing up on the Donate Life Colorado Organ and Tissue Donor Registry, and talk to family and friends about their decision; and*
- WHEREAS, *Grand Junction businesses are urged to participate in National Donate Life Month, utilizing available resources to educate patrons on the facts behind organ, eye, and tissue donation.*

NOW, THEREFORE, I, Sam Susuras, by the power vested in me as Mayor of the City of Grand Junction, do hereby proclaim April 2014 as

"Donate Life Grand Junction Month"

in the City of Grand Junction and call upon all the citizens of Grand Junction to recognize the importance of organ and tissue donation.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Grand Junction this 2nd day of April, 2014.


Mayor





Grand Junction

State of Colorado

PROCLAMATION

WHEREAS, *autism is a pervasive developmental disorder affecting the social, communication, and behavioral skills of those affected by it; and*

WHEREAS, *as more health professionals become proficient in diagnosing autism, more children are being diagnosed on the autism spectrum, resulting in rates as high as 1 in 88 children nationally and 1 in 49 in Colorado; and*

WHEREAS, *while there is no cure for autism, it is well-documented that if individuals with autism receive treatment early in their lives, it often is possible for those individuals to lead significantly improved lives; and*

WHEREAS, *individuals with autism often require a lifetime of specialized and community support services to ensure their health and safety and to support families' resilience as they manage the psychological and financial burdens autism presents.*

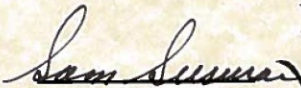
NOW, THEREFORE, I, Sam Susuras, by the power vested in me as Mayor of the City of Grand Junction, do hereby proclaim April 2014 as


"National Autism Awareness Month"

in the City of Grand Junction and urge all employees and residents to participate in our municipality's National Autism Awareness Month activities, in order to become better educated on the subject of autism spectrum disorders.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Grand Junction this 2nd day of April, 2014.




Mayor



Grand Junction

State of Colorado

PROCLAMATION

WHEREAS, heightening awareness in the 18-30 year old age group around the need for young people to create advance medical directives is a goal of the Advance Care Planning Task Force; and

WHEREAS, it is estimated that only about 20 percent of people in Colorado have executed an advance directive. Moreover, it is estimated that less than 50 percent of severely or terminally ill patients have an advance directive; and

WHEREAS, it is likely that a significant reason for these low percentages is that there is both a lack of knowledge and considerable confusion in public about advance directives; and

WHEREAS, one of the principal goals of Healthcare Decisions Day is to encourage medical professionals and lawyers to volunteer their time and efforts to improve public knowledge and increase the number of Mesa County citizens with advance directives; and

WHEREAS, communicating end-of-life wishes involves introducing the conversation, exploring personal beliefs and choices, and defining and documenting these wishes; and

WHEREAS, the Advance Care Planning Task Force and other organizations throughout Mesa County/Colorado have endorsed this event and are committed to educating the public about the importance of discussing health care choices and executing advance directives.

NOW, THEREFORE, I, Sam Susuras, by the power vested in me as Mayor of the City of Grand Junction, do hereby proclaim April 16, 2014 as

“National Health Care Decisions Day”

in the City of Grand Junction and urge all citizens to make their health care wishes known to assure that their personal beliefs/preferences will be honored during a time of medical crisis.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official Seal of the City of Grand Junction this 2nd day of April, 2014.

Sam Susuras
Mayor



Minutes

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE REGULAR MEETING**

March 19, 2014

The City Council of the City of Grand Junction convened into regular session on the 19th day of March, 2014 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Bennett Boeschstein, Martin Chazen, Jim Doody, Duncan McArthur, Phyllis Norris, Barbara Traylor Smith, and Council President Sam Susuras. Also present were City Manager Rich Englehart, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Susuras called the meeting to order. Councilmember Traylor Smith led the Pledge of Allegiance, followed by an invocation by Reverend Bob Carey with New Haven Pentecostal Holiness Church.

Proclamation

Proclaiming April 1, 2014 as “Mayor’s Day of Recognition of National Service” in the City of Grand Junction

Councilmember Doody read the proclamation.

Susan Garcia, with the Foster Grandparents and Senior Companion Programs, was present to receive the proclamation. She recognized the work of the programs included in the proclamation. She thanked the City Council and announced an event at the Botanical Gardens on April 1, 2014.

Presentation

Presentation of Gold Leaf Award to Grand Junction Parks and Recreation on behalf of the International Society of Arboriculture

Parks and Recreation Director Rob Schoeber introduced this presentation, describing the award and the programs recognized. He introduced Forestry Supervisor Tom Ziola. Mr. Ziola recognized the Forestry Board and the members present. He said this year they had a raffle drawing where tree care companies offered free tree care services as prizes. He recognized the companies that donated their time and services.

Council President Susuras thanked the City Forestry Division.

Councilmember Norris thanked the companies that donated their services.

Councilmember Chazen lauded the work of the Forestry Board.

Councilmember Boeschstein also recognized the Forestry Board and the fact that Grand Junction is a Tree City USA.

Councilmember Doody related the story of his tree for his previous service on the Grand Junction City Council.

Appointment

Councilmember Boeschstein moved to appoint David Murray to the Grand Junction Regional Airport Authority for a partial term expiring May 2015. Councilmember Norris seconded the motion. Motion carried by roll call vote.

Certificates of Appointment

Elizabeth Neubauer was present to receive her certificate of appointment and Shirley Nilsen was present to receive her certificate of re-appointment, both to the Forestry Board. They thanked the Council for appointing them.

Deanna Pickman was present to receive her certificate of appointment and Lancer Livermont was present to receive his certificate of re-appointment, both to the Commission on Arts and Culture. They thanked the Council for the opportunity to serve. Ms. Pickman said this is her first experience on a board.

Council Comments

Councilmember Boeschstein said he went to the Horizon Drive Association Business Improvement District (HDABID) meeting that morning and they honored Dale Reece who is going off the board. He went to the Riverfront Commission meeting on Tuesday and they are working on a new strategic plan. He also went to meetings for the Pear Park Fire Group and the Grand Junction Economic Partnership (GJEP) quarterly meeting.

Councilmember Chazen said on March 6th he went to a Parks and Recreation Advisory Board (PRAB) meeting and there was a review of the latest iteration of the Matchett Park Master Plan. On March 13th he went to a joint Downtown Development Authority/Downtown Grand Junction Business Improvement District (DDA/DGJBID) meeting. They reviewed the year and approved an asbestos abatement contract for the White Hall building. They also discussed business development. He went to a reception with US Airways regarding an advertising opportunity. On March 14th he also went to the Botanical Gardens where Strive hosted a showcase demonstrating the progress at Botanical Gardens. Today he attended a new employee orientation luncheon and met the City's newest employees.

Councilmember McArthur went to the 5-2-1 Drainage Authority Annual Meeting last week and new officers were elected. He was selected as vice chair of this board. The board considered a proposal on long term goals. They are looking at maintaining the the current permits and system and looking at future projects and how those will be addressed.

Council President Susuras attended a pep rally on March 6th at Redlands Middle School recognizing a long time employee. More than six hundred children attended the event organized by teacher Chris Prickett and Principal Kelly Reed. He described the event and the honor brought to the terminally ill custodian Robert Lesko.

Citizen Comments

There were none.

CONSENT CALENDAR

Councilmember Chazen read the Consent Calendar items #1-11 and then moved to adopt the Consent Calendar. Councilmember Traylor Smith seconded the motion. Motion carried by roll call vote.

1. Minutes of the Previous Meetings

Action: Approve the Summary of the March 3, 2014 Workshop and the Minutes of the March 5, 2014 Regular Meeting

2. Setting a Hearing on the 2014 Supplemental Appropriation Ordinance

This request is to appropriate certain sums of money to defray the necessary expenses and liabilities of the accounting funds of the City of Grand Junction for major capital projects.

Proposed Ordinance Making Supplemental Appropriations to the 2014 Budget of the City of Grand Junction

Action: Introduce a Proposed Ordinance and Set a Public Hearing for April 2, 2014

3. **Setting a Hearing for the Kelley Drive Rezone, Located at 2607 and 2609 Kelley Drive** [File #RZN-2014-59]

Request to rezone two (2) parcels, totaling 2.749 acres located at 2607 and 2609 Kelley Drive from an R-R (Residential Rural) to an R-1 (Residential 1 du/ac) zone district.

Proposed Ordinance Rezoning 2.749 Acres from R-R (Residential Rural) to R-1 (Residential 1 DU/AC) Located at 2607 and 2609 Kelley Drive (Kelley Drive Rezone)

Action: Introduce a Proposed Ordinance and Set a Public Hearing for April 2, 2014

4. **Vacation of 10' Utility Easement, Located at 531 Maldonado Street** [File #VAC-2013-490]

Request to vacate a 10' public utility easement on 2.388 acres in a C-1 (Light Commercial) zone district. The easement is no longer necessary due to the relocation and abandonment of the water line historically located within the easement.

Resolution No. 06-14—A Resolution Vacating a 10' Utility Easement Located at 531 Maldonado Street

Action: Adopt Resolution No. 06-14

5. **Colorado Information Sharing Consortium Intergovernmental Agreement**

In 2007, the Grand Junction Police Department became a founding partner in the Colorado Information Sharing Consortium (CISC), designed to further the sharing of information between law enforcement agencies within the State of Colorado through the use of "Coplink." The CISC was originally based on a Memorandum of Understanding, but now seeks to obtain legal status through an Intergovernmental Agreement.

Action: Authorize the City Manager to Sign an Intergovernmental Agreement between the City of Grand Junction and All Other Members of the Colorado Information Sharing Consortium

6. **Motor Control Center Replacement for Persigo WWTP Phase II**

The Persigo Wastewater Treatment Facility is currently 30 years old. As a result of its age many of the electrical components have exceeded their useful life expectancy. This request is to authorize the Purchasing Division to enter into a contract with CAM Electric to provide a new replacement motor control center for the Plant Water Pump Station Building.

Action: Authorize the Purchasing Division to Enter into a Contract with CAM Electric to Provide a New Replacement Motor Control Center for the Plant Water Pump Station Building located at the Persigo Wastewater Treatment Plant in the amount of \$54,550

7. **Lincoln Park Moyer Pool Filter Replacement**

Parks and Recreation is seeking approval for replacement of the Lincoln Park Moyer Pool filter system. The current system is 28 years old and has exceeded its life expectancy.

Action: Authorize the Purchasing Division to Enter into a Contract with CEM Sales and Service to Provide and Install a New Replacement Pool Filtration System at Lincoln Park Moyer Pool in the Amount of \$124,000

8. **Purchase Four All Wheel Drive (AWD) Utility Police Special Services Vehicles**

This purchase of four AWD utility vehicles will replace four police sedan patrol vehicles. As part of the Fleet Replacement Program, these new units will continue to be used as patrol vehicles in the Police Department.

Action: Ratify the Purchase of Four AWD Utility Police Special Services Vehicles from Spradley Barr Ford of Greeley, CO in the Amount of \$155,288

9. **Aggregate and Road Material for the Streets Division for 2014**

This request is for the purchase of approximately 7,000 tons of 3/8" Chips aggregate for the City's Streets Division for 2014. This aggregate will be used as chips for the 2014 Chip Seal project.

Action: Authorize the Streets Division to Enter into a Contract with Whitewater Building Materials Corp. to Provide Aggregate and Road Materials for the Streets Division for an Estimated Amount of \$115,500

10. **Dump Truck Rentals with Drivers for the City Spring Cleanup Program 2014**

This request is for the award of a contract for the rental of dump trucks with drivers to haul debris and refuse to designated collection sites as part of the City's Annual Spring Cleanup Program for 2014.

Action: Authorize the Purchasing Division to Enter into a Contract with Colorado West Contracting, Inc. to Provide Thirteen Dump Trucks with Drivers for the Duration of the Two Weeks for the City Spring Cleanup Program, for an Estimated Amount of \$70,000

11. **Resolution Opposing the Public Trust Doctrine Initiatives Relative to Water Stewardship**

Resolution No. 07-14—A Resolution in Support of the Colorado Water Stewardship Project and in Opposition to Public Trust Doctrine Initiatives

Action: Adopt Resolution No. 07-14

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing—Droskin Rezone, Located at 2726 Patterson Road [File #RZN-2013-547]

Request to rezone 0.375 acres located at 2726 Patterson Road from an R-8 (Residential 8 du/ac) to an R-O (Residential Office) zone district.

The public hearing was opened at 7:33 p.m.

Brian Rusche, Senior Planner, presented this item noting the applicant is Dr. Greg Droskin who was in attendance. Dr. Droskin would like to relocate his dental practice to this building. It would not be permitted with the current zoning, therefore the request. Mr. Rusche described the site, the location, and how the area has changed since the original zoning. The rezone is consistent with the Comprehensive Plan and the property is also located within the mixed use opportunity corridors. Mr. Rusche provided a number of examples of commercial zoning in the vicinity of the property.

Councilmember Boeschstein asked about driveway access for the office. Mr. Rusche said that will be addressed during a site plan review when the conversion takes place. Dr. Droskin is aware of the limited access.

Dr. Droskin said it is his understanding that access to Patterson Road will be closed and access will be from 15th Street.

Dr. Droskin said he has nothing to add but can answer questions.

Councilmember Traylor Smith asked about the exterior/façade plan. Dr. Droskin said the concept provided of the building at Patterson and 28 ¼ Road is similar to what his building will look like.

Councilmember McArthur asked what the parking standard is. Mr. Rusche said for a medical building it is one parking space per 250 square feet. There appears to be enough room for the parking needed. Dr. Droskin said the proposed office will be about 2,000 square feet.

There were no public comments.

The public hearing was closed at 7:41 p.m.

Ordinance No. 4624—An Ordinance Rezoning 0.375 Acres from R-8 (Residential 8 DU/AC) to R-O (Residential Office), Located at 2726 Patterson Road (Droskin Rezone)

Councilmember Traylor Smith moved to adopt Ordinance No. 4624 and ordered it published in pamphlet form. Councilmember McArthur seconded the motion. Motion carried by roll call vote.

Grand Junction Regional Airport Authority Request for City Council Consent to Rescind Federal Aviation Administration Grant #3-08-0027-51

In August of 2013, the Federal Aviation Administration (FAA) awarded the Airport Improvement Program Grant #3-08-0027-51 (AIP-51) to fund a portion of Terminal Building Phase I (the "Building") at the Grand Junction Regional Airport.

Before drawing on the grant, and in an exercise of caution, the board of the Grand Junction Regional Airport Authority has proposed re-classifying certain areas within the building to ensure the FAA grant eligibility percentage is in all respects proper.

The Airport Authority Board agrees that this is the most straightforward approach; however, prior to requesting the FAA rescind the grant, the Airport is requesting consent from both the City Council and the County Commissioners.

Steve Wood, Airport Authority Board Chairman, introduced this item and noted Interim Airport Director Amy Jordan and Staff member Ben Johnson are with him to answer questions. He explained the request and how the situation has been fluid. He asked if there are any questions or if he can answer the questions in the letter.

Chairman Wood answered the questions in the letter as requested by Councilmember Norris. There is no hard or strict requirement that they must rescind the grant. However, the Airport Authority unanimously voted to rescind the grant and the County has consented. It was a strong suggestion by the FAA through a conference call.

Councilmember Norris asked why the board wants to rescind the grant rather than revise or update it. Chairman Wood replied that amending the grant depends on the scope of the amendment. This change is fairly significant for both the footprint and the name of the building. The Airport Authority Board felt the grant had fatal flaws. Councilmember Norris asked if they will be applying for a new grant. Mr. Wood said the certainty and the timing have become questionable. They will apply if feasible and possible. Councilmember Norris asked how much of the building is complete and how much is owed to Shaw Construction if stopped right now. Mr. Wood said the building is 37% complete and the board voted to pay Shaw Construction the February invoice, which brings them current. The construction has been suspended. Councilmember Norris asked for confirmation that the Airport Authority has the funds to pay whatever is owed to the contractor. Mr. Wood said yes. The FAA has changed their position over time and they are exercising extra caution. They were here on March 4th to present the basics on Airport funding. Staff met with them prior to the workshop, and they expressed some concern and asked them not to submit another grant application until mid-May.

Councilmember Doody asked if there is anything in writing from FAA asking them to rescind the grant. Mr. Wood said they have an email from FAA recommending it be rescinded. Councilmember Doody asked if it is because of the use. Mr. Wood said partially yes and also due to the name of the building. Mr. Wood said when the name and the floor space were aligned to the actual use, the eligibility went down significantly. A second grant will likely be reduced based on the new designation. Councilmember Doody asked if the FAA has any concerns regarding the fence originally designated as a wildlife fence which is actually a security fence. Mr. Wood said although the FAA should answer for themselves, initially he doesn't think they were concerned, however, the FAA's answer might be different today.

Councilmember Boeschstein asked what the purpose of the building is. Mr. Wood said it is an Administration, Air Rescue, and Fire Fighting (AARF) building. Councilmember Boeschstein asked if that was always the purpose of this building. Mr. Wood said the plans submitted to the FAA and the building plans were different. Councilmember Boeschstein noted that the Master Plan shows this building to be an administration office building and asked if the Master Plan changed. Mr. Wood said the AARF portion was added later. The FAA grant was based on a terminal and baggage screening area. The uses have changed. Councilmember Boeschstein asked if the building can be shelled out with the grant funding. Mr. Wood said no draws have been made against the grant and it is his belief that at this time the FAA would not allow or recommend drawing on the grant.

Councilmember Traylor Smith asked, with this new information, does amending the grant need to be reconsidered. Mr. Wood said the board feels they would still want to proceed with rescinding the grant due to the fatal flaws. Councilmember Traylor Smith asked how the construction of the building will be finished without a grant. Mr. Wood said he did not know and that is why the construction has been suspended. They are at a good stopping point and the project can be put to sleep without degradation of the existing structure. He said the board will ask if there are any other purposes that would be better than those currently contemplated.

Councilmember McArthur asked for clarification. Mr. Wood said the FAA grant funds were based on 69% eligibility and by redesignating the floor spaces, the eligibility dropped to 43%. That would have dropped both the Federal and State funding significantly, plus the cost was more than originally thought. Councilmember McArthur asked about the reason for the cost overruns. Mr. Wood said that other costs were hidden elsewhere. The fatal flaws were confirmed by the Staff and the board.

Councilmember Chazen asked if there are funds available for continuing operations. Mr. Wood said there are, as long as the construction is suspended for this project. Councilmember Chazen asked what the cost will be to finish the building. Mr. Wood said \$4.2 million with the contractor and another \$1.5 million to finish the building to full functionality. Councilmember Chazen asked if the Airport has the resources to finance the completion. Mr. Wood said over time that would be conceivable. The Airport is in a positive cash flow position. Councilmember Chazen asked if the contract will need to be renegotiated with the contractor and will there be a penalty. Mr. Wood said the contract allows suspension and there is no provision that provides for restart costs but they are working on that right now. Councilmember Chazen asked about impediments to re-applying for the grant. Mr. Wood said there is need to have policies and procedures in place which are part of the assurances, and Staff is working earnestly to create them and get them in place. It's part of compliance with the grant. That is Mr. Johnson's primary activity these days. Councilmember Chazen asked when they will be in place and when the re-application grant process can occur. Mr. Wood said in a few weeks but there is an underlying issue and the last thing FAA said is that they did not want to see an application until mid-May. Councilmember Chazen asked if there was an outside time limit for a construction contract suspension. Mr. Wood said not to his knowledge. The contractor must tidy up the site and put it in proper order to keep it from degradation. Councilmember Chazen asked City Attorney Shaver about City liability. City Attorney Shaver said there is no liability for the City. Councilmember Chazen asked what the options are. Mr. Wood said the suspension is done so options can be evaluated. The Airport has met with the Fire Department regarding possibilities of a north area fire station. There needs to be time to study the building. Councilmember Chazen thanked Mr. Wood and the efforts of the board.

Council President Susuras said City Staff would encourage continued talks with the Fire Department on the possibilities of putting a substation in the new building.

Mr. Wood said the board would be eager to carry those conversations forward as well as any other ideas.

Councilmember McArthur noted part of the issue is a compliance issue. The newest member to the Grand Junction Regional Airport Authority, David Murray, has extensive experience with compliance and dealing with the federal government and Councilmember McArthur suggested the board defer a decision until Mr. Murray has an opportunity to review the situation.

Councilmember Boeschstein said there is a cost when a project is stopped and the stoppage has escalated the cost. He noted Council President Susuras's thought that the Council should not rescind the grant. He agreed with taking time before making a decision to let Mr. Murray review and make a recommendation.

Council President Susuras said that although initially he was against rescinding the grant, he now believes the board is at a point of no return and would now recommend rescinding the grant.

Councilmember McArthur moved to defer the decision until the new Airport Authority Board member David Murray has an opportunity to review this issue for compliance. Councilmember Boeschstein seconded the motion.

Councilmember Chazen asked if there will be an impact with the reapplication process of the grant, costs, or the contractor, if the matter is deferred for review. Mr. Wood said reluctance on rescinding the grant will send a message to FAA and the federal prosecutor that the board is reluctant to become transparent.

Council President Susuras said new board member, Mr. Murray, will not be looking at the rescission but rather will be focusing on compliance as well as policies going forward. He thinks the grant should be rescinded at this point.

Councilmember Chazen asked about the County's position on this.

Council President Susuras said the County voted to rescind.

Councilmember Norris said the new board member will have his hands full. He will help them get into compliance but this contract and grant are not focused on compliance. The grant will not do any good at this point. There is a need to get this out of the way and figure out what steps to take to move forward for the future. She will vote to rescind the grant.

Councilmember McArthur said the FAA has not said the grant is no longer good. He is not comfortable rescinding the grant without knowing the FAA's stance.

Council President Susuras asked City Attorney Shaver how persuasive the email from the FAA is. City Attorney Shaver said his recollection is that FAA recommended the grant be rescinded and the tenor of the email suggested FAA thought there were problems. There is also the point that Mesa County has recommended to rescind the grant and it takes both the City and the County to keep the grant, so as of this point, there is no grant anyway. City Attorney Shaver said his recommendation is to rescind the grant.

Councilmember Traylor Smith asked how the Airport Authority Board voted. Council President Susuras said it was a unanimous decision to rescind the grant.

Councilmember Norris said the Airport Authority Board has researched this and they are unanimously in favor of rescinding the grant. She thinks Council should support the board's decision.

Councilmember Doody said, in regards to future use, he does not want to see the Clifton Fire Study in jeopardy by making this airport building a fire station when there is desperate need in Pear Park for a fire station.

City Manager Englehart said there have been early discussions before the grant was submitted. The highest priority is the Pear Park area for a fire station. Although there is a need in the north end of the City, it would not change the course of action towards building a fire station in Pear Park.

Councilmember Boeschestein asked if the Master Plan makes a difference. There is a Master Plan for the Airport, and it indicates the building as an Administration Office building, and unless the Master Plan is changed, this is the plan required. Construction costs will inflate and it is not good to leave Shaw Construction in the lurch. He would like board member Mr. Murray to have a chance to review, therefore, he would like to postpone this decision.

Council President Susuras said a Master Plan was never presented to Council.

City Manager Englehart said it was, noting however, that if there were any changes to the Master Plan those would have had to come forward. The original Master Plan was presented to Council and is online, but changes never came forward.

Motion failed by roll call vote 5 to 2 with Councilmembers Norris, Traylor Smith, Chazen, Doody, and Council President Susuras voting NO.

Councilmember Traylor Smith moved to authorize the Mayor to sign a letter consenting to the rescission of the FAA Grant AIP-51. Councilmember Norris seconded. Motion carried by roll vote 5 to 2 with Councilmember McArthur and Boeschestein voting NO.

Las Colonias Park Amphitheater Design Grant Request

This is a request to authorize the City Manager to submit a request to the Colorado Department of Local Affairs for a maximum \$180,000 grant for final design and phasing options for the Las Colonias Park Amphitheater.

Rob Schoeber, Parks and Recreation Director, presented this item. He explained the purpose of the request. The Master Plan includes the construction of a large community amphitheater. The site would need to be designed before they can go forward. This grant would be available to move forward on the design process. An estimate of the cost is \$240,000. This would design the entire area and provide construction documents for the building to allow them to be shovel ready for when funds become available for construction. The grant requires a 25% match so \$60,000 would be required from the City. A number of options for that funding have been presented. The Lion's Club has offered \$10,000 toward the match so the City would only be responsible for \$50,000.

Councilmember Norris asked about the phase currently. Mr. Schoeber said they are awaiting word on a grant for Phase I. Councilmember Norris asked what phase the amphitheater is. Mr. Schoeber said, as with all other elements of the park, they are on an as available basis. Irrigation and infrastructure would have to be installed first. The design would not change the timeline of the other events, it will just allow the City to be ready. Councilmember Norris asked about the time frame. Mr. Schoeber said that is not known at this time. Councilmember Norris said she is concerned that the design may change before construction has started as it has with other projects. She does not want to spend money and have to spend the money again in a few years for the same thing. Mr. Schoeber said he would like to have a set of options; the \$3 million option may not be doable so they could build in a number of options that may be more doable.

Councilmember Doody asked about the 10,000 seating capacity for the amphitheater. Mr. Schoeber said that is the maximum capacity of the current design.

Councilmember Chazen noted the two funding sources and asked if the Open Space fund is currently pledged to another project. Mr. Schoeber said the \$429,000 is unencumbered and not spoken for. The current balance is higher but several hundred thousand dollars are already pledged for Phase I development.

Councilmember Chazen asked about the Conservation Trust Fund (CTF) of \$40,000. Mr. Schoeber said the CTF is lottery proceeds and the amount fluctuates, however, he believes there will be an ending balance in excess of \$40,000 that is not spoken for. Councilmember Chazen asked if these funds are for specific uses. Mr. Schoeber said these funds are used for capital projects, design work, or purchase of land.

Councilmember Chazen asked why the match is so high. Mr. Schoeber said each organization has a different funding model. Councilmember Chazen asked if the Open Space and CTF funds can be used to do some projects in the park that would provide a more immediate use. Mr. Schoeber said Staff will continue to look for funding sources.

Councilmember Traylor Smith asked if there are any other anticipated needs that may need to use the remaining balance in the Open Space funds. Mr. Schoeber said there is nothing in this budget year, however, in five years the plan is to continue development at Las Colonias and Matchett Parks. The funding would come through development fees. Councilmember Traylor Smith asked if the expenditures would require supplemental appropriation. Mr. Schoeber said yes, if one of the sources were approved, it would be brought back to Council for approval. Councilmember Traylor Smith asked whether the approval is only necessary if the grant is received. Mr. Schoeber said yes.

Councilmember McArthur asked if this will allow for coordination with Colorado Discoverability. Mr. Schoeber said these are two independent projects approximately 200 yards away from each other. Councilmember McArthur asked why this was not anticipated for budget review in 2013. City Manager Englehart said the DOLA grant process has different cycles, and Council has instructed Staff to pursue all possible grants, and Council decides whether this moves forward or not. City Manager Englehart said at the time the grant was discussed for a fire station, but because of the timing, this became an option for use of the grant funding for this project. City Manager Englehart noted that the Lions Club would like to expend their funds within three years for their portion of funding the amphitheater.

Council President Susuras asked if there is other interest in this development besides the Lions Club. Mr. Schoeber said Staff attended a World Philanthropy Days Expo and this project received indication of a lot of support from various foundations.

Councilmember Boeschstein said he also attended this Expo and there were lots of favorable comments from foundations. The owner of LOKI is very interested and wanted to build the stage; there are many businesses who have a great interest in this. The Lions Club support is very amazing. Outdoor concerts in Fruita were at capacity and above. A 5,000 person capacity is a good number for concerts. This is an important project, it is a good opportunity.

Councilmember Chazen noted there were partners with the last grant submitted and asked if there are any other partners with this project. Mr. Schoeber said, because of quick timing, there has not been time to cultivate a new set of partnerships; April 1, 2014 is the deadline. Councilmember Chazen asked if Council was being asked to pick a funding option. Mr. Schoeber said rather than providing a recommendation for Council, Staff thought to provide Council with the options. If any of the options look appealing, Council could include that option in the motion made. Councilmember

Chazen said he would prefer option 2 or 4, but he thinks Council is getting ahead of themselves.

Councilmember McArthur asked if parts of Las Colonias are in the floodplain. Mr. Schoeber said yes, but all construction would be out of the floodplain. For this particular site, this building would not be in the floodplain, but the seating area might be in the floodplain.

Resolution No. 08-14—A Resolution Authorizing the City Manager to Submit a Grant Request to the Colorado Department of Local Affairs' (DOLA) Energy and Mineral Impact Assistance Program for Design of the Proposed Las Colonias Park Amphitheater

Councilmember Doody moved to adopt Resolution No. 08-14 and use funding Option #2. Councilmember Boeschstein seconded the motion. Motion carried by roll call vote 5 to 2 with Councilmembers Chazen and Norris voting NO.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting adjourned at 9:04 p.m.

Stephanie Tuin, MMC
City Clerk



Date: March 24, 2014
Author: Scott D. Peterson
Title/ Phone Ext: Senior
Planner/1447
Proposed Schedule: First
Reading: April 2, 2014
2nd Reading: April 16, 2014
File #: VAC-2014-40

**Attach 2
CITY COUNCIL AGENDA ITEM**

Subject: Vacation of Portions of Cannell and Elm Avenue and Adjacent Alley Rights-of-Way for Colorado Mesa University

Action Requested/Recommendation: Introduce a Proposed Ordinance and Set a Public Hearing for April 16, 2014

Presenter Name & Title: Scott D. Peterson, Senior Planner

Executive Summary:

Request to vacate portions of Cannell and Elm Avenue and adjacent alley rights-of-way for Colorado Mesa University to facilitate the continued westward expansion efforts planned for the campus.

Background, Analysis and Options:

The applicant, Colorado Mesa University ("CMU"), wishes to vacate portions of Cannell and Elm Avenue between Kennedy and Texas Avenue's and adjacent alley rights-of-way in order to facilitate the continued westward expansion efforts planned for the campus, specifically to develop new residence halls, a new rugby field, parking lots and in the future construct new campus improvements within this area.

The properties abutting the sections of right-of-way for which vacation is sought are owned by Colorado Mesa University. City staff does not expect that the proposed vacations would impede traffic, pedestrian movement or access to private property. As a condition of approval, CMU will construct a new 20' wide north/south circulation drive (fire access lane) at the termination of Elm Avenue and adjacent alleys that will connect to Texas and Kennedy Avenue's (which the public could be able to utilize). CMU is not proposing to dedicate an Access Easement nor right-of-way or construct a sidewalk for this new north/south connection, but will be constructed to meet City standards for fire access. The driving surface treatment proposed would be recycled asphalt. However, as proposed by the applicant, it will be at CMU's discretion on when this north/south connection would be closed or modified in the future, provided that all new fire access lanes are provided and constructed. Access and maneuverability of fire and other emergency equipment will be accommodated utilizing the extensive network of emergency lanes currently existing on the main campus of CMU (see attached Emergency Access Plan).

With the vacations, the City of Grand Junction (“City”) will retain a utility easement for the existing electric, gas, water, sewer and storm drain lines that are located within the existing rights-of-way of Cannell and Elm Avenue’s and associated alleys.

Neighborhood Meeting:

The applicant held a Neighborhood Meeting on February 25, 2014 with nine citizens attending the meeting along with City Staff and CMU representatives. No one in attendance indicated any dissatisfaction with the proposed interim circulation patterns as presented.

How this item relates to the Comprehensive Plan Goals and Policies:

Vacating these rights-of-way supports the University in their facilities and building expansion development, enhances a healthy, diverse economy and supports a vibrant City Center, therefore, the proposed rights-of-way vacation implements and meets the following goals and policies from the Comprehensive Plan.

Goal 1: To implement the Comprehensive Plan in a consistent manner between the City, Mesa County, and other service providers.

Policy C: The City and Mesa County will make land use and infrastructure decisions consistent with the goals of supporting and encouraging the development of centers.

Goal 12: Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.

Board or Committee Recommendation:

The Planning Commission will be reviewing this request at their March 25, 2014 meeting. Project Manager is recommending approval of the proposed vacation requests.

Financial Impact/Budget:

This vacation action has no financial impact.

Legal issues:

The proposed vacation request has been reviewed by the Legal Division.

Other issues:

There are no other issues.

Previously presented or discussed:

This item has not been presented or discussed at a previous City Council meeting or workshop.

Attachments:

Site Location Map / Aerial Photo Map
Comprehensive Plan Future Land Use Map / Existing Zoning Map
Proposed Temporary Public Access configuration
Proposed Future Construction configuration, Larger Context
CMU Campus Facilities Master Plan Emergency Access Plan Map
CMU Ownership Map
Correspondence received
Ordinance

BACKGROUND INFORMATION					
Location:		Portions of Cannell and Elm Avenue and adjacent alley rights-of-way			
Applicant:		Colorado Mesa University			
Existing Land Use:		City street and alley rights-of-way			
Proposed Land Use:		Colorado Mesa University residence hall construction, rugby field and future campus buildings			
Surrounding Land Use:	North	Colorado Mesa University properties			
	South	Colorado Mesa University properties			
	East	Colorado Mesa University properties			
	West	Colorado Mesa University properties			
Existing Zoning:		R-8 (Residential – 8 du/ac)			
Proposed Zoning:		N/A			
Surrounding Zoning:	North	R-8 (Residential – 8 du/ac)			
	South	R-8 (Residential – 8 du/ac)			
	East	R-8 (Residential – 8 du/ac)			
	West	R-8 (Residential – 8 du/ac)			
Future Land Use Designation:		Business Park Mixed Use and Residential Medium High (8 – 16 du/ac)			
Zoning within density range?		X	Yes		No

Section 21.02.100 of the Grand Junction Zoning and Development Code:

The vacation of a portion of the existing rights-of-way shall conform to the following:

- a. The Comprehensive Plan, Grand Valley Circulation Plan, and other adopted plans and policies of the City.

Granting the request to vacate portions of the existing rights-of-way does not conflict with the Comprehensive Plan, Grand Valley Circulation Plan and other adopted plans and policies of the City. CMU will construct an internal circulation drive for its own use (which the public could be able to utilize) that will provide a connection between Kennedy and Texas Avenue’s and adjacent alleys and also serves as a fire access lane. A utility easement will be retained for existing utilities as a condition of approval. Access and maneuverability of fire and other emergency equipment will be accommodated utilizing the extensive network of emergency lanes currently existing throughout the main campus of CMU. All access roads shall meet City standards for fire access.

Therefore, this criterion has been met.

- b. No parcel shall be landlocked as a result of the vacation.

No parcels will be landlocked as a result of these vacation requests. All abutting properties are owned by CMU. CMU has also stated that all north/south, east/west connections can still be made through the construction of a new circulation drive and fire access lane.

Therefore, this criterion has been met.

- c. Access to any parcel shall not be restricted to the point where access is unreasonable, economically prohibitive or reduces or devalues any property affected by the proposed vacation.

Access will not be restricted to any parcel.

Therefore, this criterion has been met.

- d. There shall be no adverse impacts on the health, safety, and/or welfare of the general community and the quality of public facilities and services provided to any parcel of land shall not be reduced (e.g. police/fire protection and utility services).

Trash collection and general circulation to the area may be impacted if CMU decides that it will close the new north/south circulation drive, however it is anticipated that CMU will keep all access ways open for public use and continue to provide fire access. No other adverse impacts on the health, safety and/or welfare of the general community is anticipated. The area is part of the larger existing CMU campus with future changes or modifications to access, right-of-way and utility location changes anticipated. With the current and future expansion of the University campus, additional educational services and opportunities will be available to the community.

Therefore, this criterion could be found to be met.

- e. The provision of adequate public facilities and services shall not be inhibited to any property as required in Chapter 21.06 of the Grand Junction Municipal Code.

No adverse comments concerning the proposed rights-of-way vacation were received from the utility review agencies during the staff review process. There are a few privately owned residential properties in the area of the proposed ROW vacation whose trash collection and/or fire and ambulance services may be impacted (see discussion above).

Therefore, this criterion could be found to be met.

- f. The proposal shall provide benefits to the City such as reduced maintenance requirements, improved traffic circulation, etc.

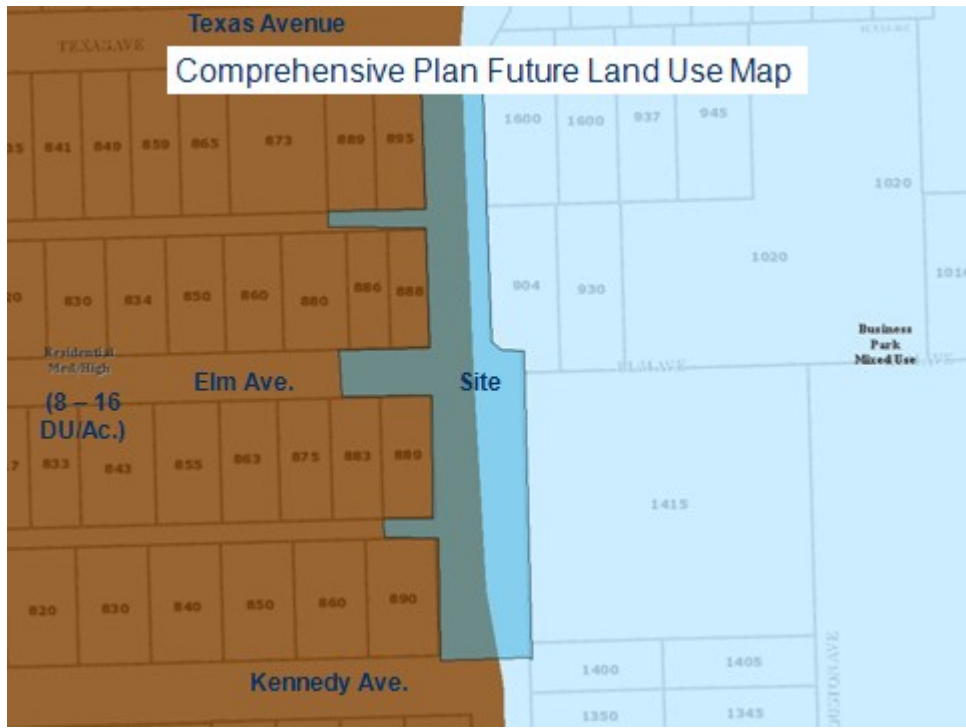
Maintenance requirements for the City will not significantly change as a result of the proposed partial rights-of-way vacation. A Utility Easement will be retained to allow for the continuation and access of existing utilities. The benefit to the City is the expansion of CMU and its mission to educate and by enhancing and preserving Grand Junction as a regional center. The proposed rights-of-way vacation is needed by CMU as part of their continued campus expansion to the west.

Therefore, this criterion has been met.

FINDINGS OF FACT/CONCLUSIONS AND CONDITIONS:

After reviewing the Colorado Mesa University application, VAC-2014-40 for the vacation of a portion of public rights-of-way, the following findings of fact and conclusions:

1. The requested right-of-way vacation is consistent with the Comprehensive Plan.
2. The review criteria in Section 21.02.100 of the Grand Junction Zoning and Development Code have all been met, specifically, items a through f.
3. As a condition of vacation, the City retains a utility easement over all of the right-of-way areas to be vacated for maintenance, operation and repair of existing utility infrastructure.
4. With the vacation, CMU shall construct a new 20' wide north/south circulation drive and allow usage of the circulation drive by the public, trash collection trucks and fire/ambulance vehicles and meets City standards for fire access.
5. With the vacation, CMU shall continue to provide fire and other emergency vehicle access utilizing the extensive network of emergency lanes currently existing throughout the main campus (See Emergency Access Plan).









CMU OWNERSHIP MAP



Cannell Av.

Texas Ave.

Elm Avenue

Kennedy Av.

Bunting Av.

Proposed Street and Alley Vacation

Cannell Av.



Indicates Property Owned by CMU



MARCH 14, 2014

From: "Christina Stark" <christinaarstark@gmail.com>
To: <scottp@gjcity.org>
Date: 2/11/2014 7:52 AM
Subject: VAC-2014-40-Cannel Avenue ROW Vacation - Cannell Avenue Comment

Scott,

I would like to provide you with my concerns with the proposed vacation of Cannell Avenue. I find this proposed vacation to be fairly concerning as a homeowner and resident that lives between Cannell Avenue and 7th Street. Cannell Avenue provide important access to and from my home. This access is more than a mere convenience and also provides safety as the second route for leaving my neighborhood. If this street is vacated then there will only be one route to enter and exit my home and neighborhood. Cannel Avenue also provides the primary route for access to the nearest grocery store to my house. I oppose the vacation of this street and I hope that the City will seriously consider the needs of the residents and tax payers and not just the desires of CMU.

Sincerely,

Christina Stark

From: Alissa Leavitt-Reynolds <alissaleavitt@gmail.com>
To: <scottp@gjcity.org>
Date: 2/11/2014 9:45 AM
Subject: VAC-2014-40-Cannell Avenue ROW Vacation - Cannell Avenue and Kennedy Alley Comment

Dear Sir,

Vacating Cannell Avenue and portions of the Kennedy avenue alley would no longer provide the public with legal public access on those routes. This is both a safety concern and an inconvenience from the perspective of a homeowner and tax payer who still lives between Cannell Ave and 7th. Please consider the residents who still live in this area and their ability to travel legally.

Sincerely,
Alissa Leavitt-Reynolds

From: Brook Blaney <Brook@impactyourlogo.com>
To: "scottp@ci.grandjct.co.us" <scottp@ci.grandjct.co.us>
CC: Brook Blaney <Brook@impactyourlogo.com>
Date: 3/11/2014 3:14 PM
Subject: e-mail from Brook Blaney - property owner of 1516 N 7th Street

Subject: CMU Street Vacation Project

Dear Scott:

As a property owner within CMU's designated "expansion area," I wanted to submit a brief comment for your consideration. I own the property at 1516 North 7th Street and I understand the university is in the process of closing a portion of Cannell Avenue in order to facilitate campus expansion projects. At the outset, I'd like to note that I wholeheartedly support what's happening at Colorado Mesa University. As an alum, I am constantly amazed by the growth of our hometown university and the plethora of changes taking place on the campus. I'm also well aware of the role the City of Grand Junction and Mesa County have played in facilitating the growth of our university each and every year. The City of Grand Junction should be proud of this progress -- and keep it going.

Naturally, I'm interested in making sure the access to the back (east) side of my property remains open and accessible via the alley that accesses Texas Avenue. Based on the information I've seen to date, I believe this access will remain open and I know (based on previous experience and their track record) that CMU is a good neighbor and will make sure my property rights are respected.

Thank you in advance for accepting my comment. I hope the Cannell Avenue vacation request is approved swiftly in order to keep CMU growing and thriving.

Sincerely,

Brook Blaney
owner
1516 North 7th Street
Grand Junction, CO 81501
970-245-3791



March 5, 2014

Re: Colorado Mesa University - Closure of Cannell Avenue

To: Grand Junction City Council
Grand Junction Department of Planning

Please accept this letter as indication of the Grand Junction Economic Partnership's (GJEP) unconditional support of Colorado Mesa University's (CMU) efforts to continue to expand the university within the City of Grand Junction. GJEP is a nonprofit economic development organization that represents the entirety of Mesa County, Colorado. The mission of the organization is to enhance the economic vitality of our community creating a strong, diverse economy and an improved quality of life.

The continued growth of CMU is good for our community and for our economy. Not only does the proposed expansion allow for the University to continue to attract, house and provide amenities for students, it also provides our community with a continued increase in construction activities during a time when we need such activity. This project will allow CMU to continue to invest in the high quality facilities that have provided for unprecedented growth in recent years.

We encourage you to look favorably on this request and provide the necessary approvals so that CMU is able to move forward with their plans to expand the premier University in Western Colorado.

If there is anything further I can provide please do not hesitate to contact me directly.

Best,

A handwritten signature in black ink, appearing to read "Kelly Flenniken".

Kelly Flenniken
Executive Director

A handwritten signature in black ink, appearing to read "Ed Forsman".

Ed Forsman
Chairman of the Board



March 14, 2014

To: Grand Junction City Council
Grand Junction Planning Department

Re: Vacation of a portion of Cannell Avenue to Accommodate CMU Expansion

Dear City Officials:

I want to inform you that the Grand Junction Area Chamber of Commerce Board of Directors at their February board meeting voted unanimously to support the request by Colorado Mesa University to vacate a portion of Cannell Avenue in order to accommodate the physical expansion of the campus.

The University is a major anchor for the community in terms of maintaining its status as a regional hub for products and services. Additionally the economic impact of CMU cannot be understated. It has been a stabilizing factor in the local economy during this most recent and past recessions. University officials have also be diligent in wisely using public funds allocated to it by the City and County along with a private donor match to buy residences along this street for just such an expansion and have thus lessened the impact on the neighborhood.

We urge you to act favorably on this request which we see as an action that will lead to economic development for the community.

Sincerely,

A handwritten signature in black ink that reads 'Diane Schwenke'. The signature is written in a cursive, flowing style.

Diane Schwenke
President/CEO

From: Ed Forsman <EForsman@fciol.com>
To: "scott@ci.grandjct.co.us" <scott@ci.grandjct.co.us>
Date: 3/14/2014 11:13 AM
Subject: FW: VAC-2-14-40-Cannell Avenue ROW Vacation

Dear Scott

I recently became aware of a project being proposed by Colorado Mesa University to close the center of Cannell Avenue in order to pave the way for their westward expansion. As the owner of 841 Texas Avenue, my wife and I believe my family has standing to provide a couple of comments.

First, it's no secret to us that CMU is purchasing property and moving westward. I have had the pleasure of being involved in community organizations over the past many years and we know that the community's vision for expanding Mesa means that they have to grow west. We support this. When we purchased 841 Texas, we didn't think they'd be moving west so quickly -- but their expansion has been great for our community in terms of job creation, new programs, a beautiful new campus and countless cultural and recreational opportunities for our families and students. In many ways, CMU's need to close the center of Cannell is good news in the sense that it means they're continue to grow and expand.

While our property is closer to Cannell Avenue than it is to North 7th Street, we do not view going west to 7th Street to get out of the neighborhood as an insurmountable inconvenience. We understand that access to the alley behind our property will remain open and, as usual, we'll be able to navigate the neighborhood through parking lots, streets, alleys, etc.

We appreciate your willingness to accept comments from neighbors as part of this process. We urge the planning commission and the City Council to approve the request and continue supporting the growth of one of our valley's greatest economic engines.

Best,

Ed Forsman
(property owner of 841 Texas Avenue Grand Junction, CO 81501)
970-434-9093 office

CITY OF GRAND JUNCTION

ORDINANCE NO.

AN ORDINANCE VACATING PORTIONS OF THE CANNELL AND ELM AVENUE AND ASSOCIATED ALLEYS RIGHTS-OF-WAY AND RETAINING A UTILITY EASEMENT LOCATED IN THE COLORADO MESA UNIVERSITY AREA

RECITALS:

Colorado Mesa University (CMU) has requested to vacate portions of Cannell and Elm Avenue between Kennedy and Texas Avenues and adjacent alley rights-of-way in order to enable the continued westward expansion efforts planned for the campus, specifically to develop new residence halls, a new rugby field, parking lots and in the future construct new campus improvements within this area.

The properties abutting the sections of right-of-way for which vacation is sought are owned by CMU. The City does not expect that the proposed vacations would impede traffic, pedestrian movement or access to private property because a temporary circulation drive will be provided by CMU. As a condition of approval, CMU will construct a new 20' wide north/south circulation drive (fire access lane) at the termination of Elm Avenue and adjacent alleys that will connect to Texas and Kennedy Avenues (which the public could utilize). CMU is not proposing to dedicate an Access Easement, right-of-way or construct a sidewalk for the new north/south connection, however it will be constructed to meet City standards for fire access. The driving surface treatment proposed would be recycled asphalt. CMU will have discretion when the north/south connection would be closed or modified in the future, provided that new fire replacement access lanes are constructed. Access and maneuverability of fire and other emergency equipment will be accommodated utilizing the extensive network of emergency lanes currently existing on the main campus of CMU.

With the vacations, the City of Grand Junction ("City") will retain a utility easement for the existing electric, gas, water, sewer and storm drain lines that are located within the existing rights-of-way of Cannell and Elm Avenues and associated alleys.

The City Council finds that the request is consistent with the Comprehensive Plan, the Grand Valley Circulation Plan and Section 21.02.100 of the Grand Junction Zoning and Development Code with the reservation of the utility easement as described within this ordinance and the construction of a new 20' wide north/south circulation drive (fire access lane) with retention of a utility easement over all of the rights-of-way being vacated for the existing utilities.

The Planning Commission, having heard and considered the request, found the criteria of the Code to have been met, and recommends that the vacation be approved with the retention of an easement for the existing utilities and the construction of a new

20' wide north/south circulation drive (fire access lane). Access and maneuverability of fire and other emergency equipment will be accommodated utilizing the extensive network of emergency lanes currently existing on the main campus of CMU.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

The following described dedicated right-of-way is hereby vacated subject to the listed conditions:

1. Applicants shall pay all recording/documentary fees for the Vacation Ordinance, any easement documents and dedication documents.
2. CMU shall construct a new 20' wide north/south circulation drive and allow usage of the circulation drive by the public, trash collection trucks and fire/ambulance vehicles and meet City construction standards for fire access.
3. CMU shall continue to provide fire and other emergency vehicle access utilizing the extensive network of emergency lanes currently existing throughout the main campus.

The following right-of-way is shown on "Exhibit A" as part of this vacation of description.

Dedicated right-of-way to be vacated:

A portion of the Cannell Avenue road Right-of-Way and a portion of the Elm Avenue road Right-of-Way and associated alleys as dedicated on South Garfield Park at reception #539508 of the Mesa County Records and Rose Park Subdivision at reception #456038 of the Mesa County Records situated in the SE1/4 of Section 11, Township 1 South, Range 1 West of the Ute Meridian, in the City of Grand Junction, County of Mesa, State of Colorado; being more particularly described as follows:

All of Cannell Avenue lying north of the most northerly right-of-way line of Kennedy Avenue and south of the most southerly right-of-way line of Texas Avenue.

Also the east 96.89 feet of Elm Avenue lying west and adjoining to the westerly Right-of-Way line of Cannell Avenue.

Also the east 96.96 feet of the 20.00 foot wide Alley between Texas Avenue and Elm Avenue lying west and adjoining to the westerly Right-of-Way line of Cannell Avenue.

Also the east 52.15 feet of the 15.00 feet wide Alley between Elm Avenue and Kennedy Avenue lying west and adjoining to the westerly Right-of-Way line of Cannell Avenue.

Said dedicated Rights-of-Way to be vacated containing an area of 1.183 acres more or less, as described herein and depicted on "Exhibit A".

Said vacated Rights-of-Way to be retained as a Utility Easement.

Introduced for first reading on this _____ day of _____, 2014 and ordered published in pamphlet form.

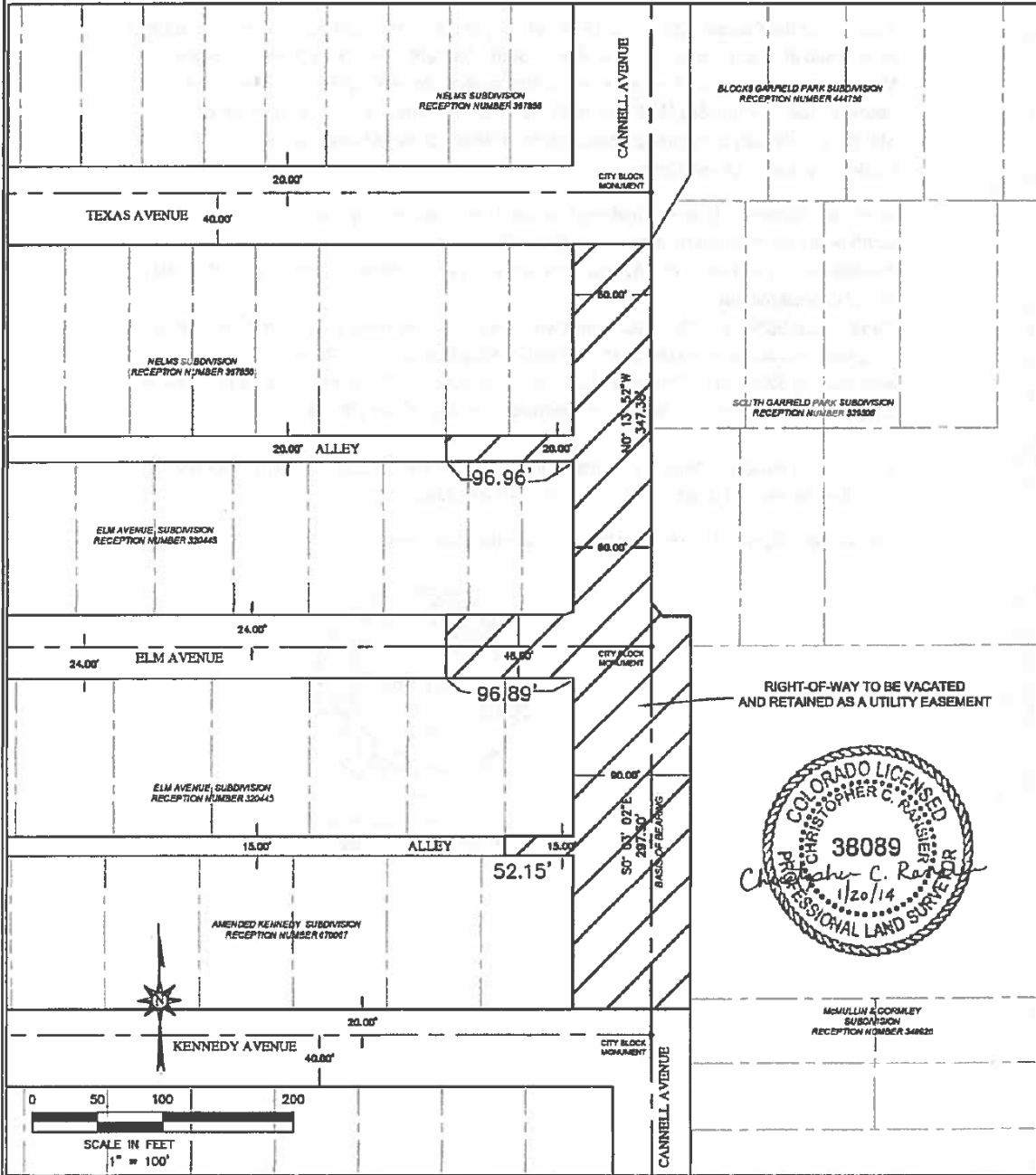
PASSED and ADOPTED this _____ day of _____, 2014 and ordered published in pamphlet form.

ATTEST:

President of City Council

City Clerk

EXHIBIT A
RIGHT-OF-WAY VACATION OF CANNELL AVENUE BETWEEN TEXAS AND KENNEDY AVENUES
AND A PORTION OF ELM AVENUE AND ASSOCIATED ALLEYS
CITY OF GRAND JUNCTION, MESA COUNTY, COLORADO





Date: 3/10/14

Author: Darren Starr

Title/ Phone Ext: 1493

Proposed Schedule: 04/02/14

2nd Reading (if applicable):

File # (if applicable):

Attach 3

CITY COUNCIL AGENDA ITEM

Subject: Purchase a Single Axle 4X2 Hook Lift Truck with a 5 Yard Dump Body and Snow Removal Equipment

Action Requested/Recommendation: Authorize the City Purchasing Division to Purchase a Single Axle 4X2 Hook Lift Truck with a 5 Yard Dump Body and Snow Removal Equipment from Hanson International Kois Brothers Equipment for \$149,015

Presenter(s) Name & Title: Jay Valentine, Internal Services Manager
Darren Starr, Streets and Solid Waste Manager

Executive Summary:

This request is for the purchase of a scheduled equipment replacement of a single axle 5 yard dump truck with snow removal equipment. The purchase proposed is a hook lift truck with a separate dump body and snow removal equipment which can be interchanged at any point. Other versatile pieces of equipment will be added in the future that can be used with this same truck such as water truck, flat bed, stake bed, or any other needed body options.

Background, Analysis and Options:

This single axle 5 yard dump truck with snow removal equipment is a part of the resources needed to provide ongoing maintenance in the Streets and Storm Water divisions. This equipment will be used for digging, trenching, patching, placing pipe, snow removal, and other departmental functions. This equipment is a scheduled replacement for the Department and has gone through the equipment replacement committee.

A formal Invitation for Bids was issued via BidNet (an on-line site for government agencies to post solicitations) and advertised in The Daily Sentinel. Three companies submitted formal bids, all of which were found to be responsive and responsible. All vendors offered a trade-in allowance for the truck currently in the City's fleet. The following amounts reflect pricing after the trade-in is taken:

FIRM	LOCATION	COST
Hanson International – Kois	Grand Junction, CO	\$149,015.00
Transwest – Kois	Grand Junction, CO	\$150,225.00
Transwest – Layton	Grand Junction, CO	\$155,177.00
Transwest – McDonald	Grand Junction, CO	\$160,557.00
Volvo of Denver Mack - Kois	Denver, CO	\$164,965.00
Volvo of Denver Mack – Layton	Denver, CO	\$169,917.00
Volvo of Denver Mack - McDonald	Denver, CO	\$175,297.00

The option for CNG fuel was not bid on this particular unit. The design of this type of unit requires the operator to look through the rear window of the truck in order to position the hydraulic hook mechanism on the different bodies being loaded. The City Purchasing and Fleet divisions have bid this style of truck in the past with CNG option as well as fuel tank location options. The fuel tank would need to be placed in a location that prevents the use of the truck’s back window. It is for that reason the CNG option was not bid for this particular unit.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 12: *Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.*

Timely replacement of aging equipment insures that vital community services will continue to be provided.

Board or Committee Recommendation:

This equipment replacement was approved by the equipment committee and Fleet Services.

Financial Impact/Budget:

Budgeted funds for this purchase have been accrued in the Fleet Replacement Internal Service Fund.

Legal issues:

There are no legal issues associated with the recommended purchase.

Other issues:

None.

Previously presented or discussed:

Vehicle/equipment replacements were discussed during the 2014 budget process.

Attachments:

None.



Date: Apr. 1, 2014
 Author: Kathy Portner
 Title/ Phone Ext: Econ Dev & Sustainability, ext. 1420
 Proposed Schedule: Apr. 2, 2014
 2nd Reading
 (if applicable): N/A

 File # (if applicable): N/A

**Attach 4
 CITY COUNCIL AGENDA ITEM**

Subject: Grand Valley Catholic Outreach Fee Request
Action Requested/Recommendation: Approve a Resolution Authorizing the City to Pay Certain Development Fees for the Grand Valley Catholic Outreach’s Proposed St. Martin Place, II
Presenter(s) Name & Title: Tim Moore, Deputy City Manager Kathy Portner, Economic Development and Sustainability

Executive Summary:

A request to have the City pay certain development fees for Grand Valley Catholic Outreach’s proposed 24 residential units adjacent to St. Martin Place on Pitkin Avenue

Background, Analysis and Options:

Grand Valley Catholic Outreach is proposing to develop 24 one-bedroom dwelling units within three buildings adjacent to St. Martin Place on Pitkin Avenue for chronically homeless, with preference given to homeless veterans. The property is located on the south side of Pitkin Avenue between S. 2nd and S. 3rd Streets where five single-family homes were recently demolished. A rezone from C-1 (Light Commercial) to B-2 (Downtown Business) is proposed, which is consistent with the Greater Downtown Plan, and would allow for a mix of uses, including housing.

The applicant is requesting that the City partner in the \$2.6 million project by waiving fees, including parks and open space fee, school impact fee, transportation capacity payment (TCP), underground utility fee, drainage fee, and water and sewer tap fees. In the past, the City has not waived fees from the Enterprise Funds. Fee waivers would come out of the General Fund to keep the water and sewer funds whole. Likewise, the TCP, Utility Undergrounding, and Drainage funds should be kept whole by transferring the required fee amounts into those funds if City Council is favorable to the fee request. The School Impact fee is a pass-through to the School District and would also have to be paid from some other fund.

The Transportation Capacity Payment (TCP) is calculated at the reduced rate approved for the downtown area, resulting in a fee of \$10,614. However, the credit for the single family homes that were on the property exceed the calculated TCP, therefore, there will be no TCP charged for the new units. There will also not be a utility undergrounding fee since the lines are in the alley, nor will there be a drainage fee since the redeveloped parcel will not result in an increase in stormwater runoff. The Parks Fee (\$225 per unit) and School Impact Fee (\$560 per unit) are credited for the 5 units that were demolished, as are the Water Tap Fee (\$1,200 credit) and Sewer Plant Investment Fee (\$16,480 credit).

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 4: Support the continued development of the downtown area of the City Center into a vibrant and growing area with jobs, housing, and tourist attractions.

- St. Martin Place II will provide needed housing in the downtown area.

Goal 5: To provide a broader mix of housing types in the community to meet the needs of a variety of incomes, family types, and life stages.

- St. Martin Place II will provide an additional 24 one-bedroom dwelling units for chronically homeless, with preference given to homeless veterans.

Board or Committee Recommendation:

None.

Financial Impact/Budget:

The applicant is requesting the City pay the following development fees:

	Fee	Fee Credit	Total Requested
Water Tap (City)	\$ 9,850.00	\$ (1,200.00)	\$ 8,650.00
Sewer PIF	71,193.60	(16,480.00)	54,713.60
Parks	5,400.00	(1,125.00)	4,275.00
Open Space	31,800.00	-	31,800.00
School Impact	13,440.00	\$ (2,800.00)	10,640.00
Total	\$ 131,683.60	\$ 21,605.00	\$ 110,078.60

The funds to pay these development fees would come out of the City Council's Economic Development budget.

Legal issues:

None.

Other issues:

In 2008, the City contributed \$167,000 for the development of St. Benedict's Place at 217 White Avenue through the infill and redevelopment program and \$50,000 of CDBG funds for the purchase of appliances for the original St. Martin Place in 2011.

Previously presented or discussed:

The City Council discussed the request at the March 17th workshop.

Attachments:

Applicant's Request Letter
Proposed Resolution



Grand Valley Catholic Outreach

245 S. First Street
Grand Junction, Colorado 81501
970-241-3655

January 10, 2014

City of Grand Junction Council Members
% Kathy Portner
250 North 5th St.
Grand Junction, CO 81501

Dear Council Members:

Grand Valley Catholic Outreach, Inc is an independent 501(c)3 nonprofit corporation that serves the needy members of our community through a variety of programs that we manage. Providing affordable housing in our community for those people who have been chronically homeless has been a priority for us. In June, 2008 we opened St. Benedict's Place at 217 White Avenue to provide 23 permanent supportive and transitional housing units. The City of Grand Junction was a generous partner in that project providing two grants in the amount of \$167,000. The balance of the funding for that project in the amount of approximately \$2,500,000 came from all private sources. In 2011 the City of Grand Junction assisted us as we built St. Martin Place - sixteen units at 415 S. 3rd for chronically homeless veterans. Both projects are constantly full.

We currently have an application pending with the city to develop another 24 units adjacent to St. Martin Place on Pitkin Avenue. This will greatly add to the improvements made in this area. Priority once again will be given to veterans who have been chronically homeless as we choose the residents for this new facility. The cost of this project is approximately \$2,600,000 and will be funded with grants and from private sources. We would like the City of Grand Junction to also be a partner in this project. Consequently, we are asking that the city waive all of the development fees associated with this project. Specifically, we asking you to waive the park fee, open space fee, school impact fee, transportation capacity payment (TCP) fee, underground utility fee, drainage fee, water and sewer tap fees and any other fees associated with this project.

We believe that an organization willing to invest over \$6,850,000 of private funds to help address our community's affordable housing needs and contribute to the well-being of the community is deserving of this consideration. Our project team made up of Shaw Construction and Chamberlin Architects has agreed to donate back a significant portion of their fees just as they did on the prior two constructions.. They have also asked the other consultants and subcontractors working on the project to join them to reduce the cost of this project.

We look forward to the opportunity to meet with you and further discuss this project and the city's participation as we together strive to serve the most vulnerable in our community.

Sincerely,

St. Karen Bland, Executive Director

Gregg Kampf, Board President

**CITY OF GRAND JUNCTION, COLORADO
RESOLUTION NO. ____-14**

**A RESOLUTION AUTHORIZING THE CITY PAYMENT OF CERTAIN DEVELOPMENT
FEES FOR THE GRAND VALLEY CATHOLIC OUTREACH'S PROPOSED ST. MARTIN
PLACE II, LOCATED AT 221 PITKIN AVENUE**

RECITALS.

Grand Valley Catholic Outreach is proposing to develop 24 one-bedroom dwelling units within three buildings adjacent to St. Martin Place on Pitkin Avenue for chronically homeless, with preference given to homeless veterans. The property is located on the south side of Pitkin Avenue between S. 2nd and S. 3rd Streets where five single-family homes were recently demolished. A rezone from C-1 (Light Commercial) to B-2 (Downtown Business) is proposed, which is consistent with the Greater Downtown Plan, and would allow for a mix of uses, including housing.

The applicant is requesting that the City partner in the \$2.6 million project by waiving fees, including parks and open space fee, school impact fee, transportation capacity payment (TCP), underground utility fee, drainage fee, and water and sewer tap fees. In the past, the City has not waived fees from the Enterprise Funds. Fee waivers would come out of the General Fund to keep the water and sewer funds whole. Likewise, the TCP, Utility Undergrounding and Drainage funds should be kept whole by transferring the required fee amounts into those funds if City Council is favorable to the fee request. The School Impact fee is a pass-through to the School District and would also have to be paid from some other fund.

The Transportation Capacity Payment (TCP) is calculated at the reduced rate approved for the downtown area, resulting in a fee of \$10,614. However, the credit for the single family homes that were on the property exceed the calculated TCP, therefore, there will be no TCP charged for the new units. There will also not be a utility undergrounding fee since the lines are in the alley, nor will there be a drainage fee since the redeveloped parcel will not result in an increase in stormwater runoff. The Parks Fee (\$225 per unit) and School Impact Fee (\$560 per unit) are credited for the 5 units that were demolished, as are the Water Tap Fee (\$1,200 credit) and Sewer Plant Investment Fee (\$16,480 credit).

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Grand Junction does hereby authorize the City payment of the following fees:

• Water Tap	\$ 8,650.00
• Sewer PIF	\$ 54,713.60
• Parks	\$ 4,275.00
• Open Space	\$ 31,800.00
• School Impact	\$ 10,640.00
TOTAL	\$110,078.60

Dated this _____ day of _____, 2014.

Sam Susuras
President of the Council

ATTEST:

Stephanie Tuin
City Clerk



Date: 3-1-2014
 Author: Darren Starr
 Title/ Phone Ext: 1493
 Proposed Schedule: 3-19-2014
 2nd Reading
 (if applicable): _____
 File # (if applicable): _____

Attach 5
CITY COUNCIL AGENDA ITEM

Subject: Purchase CNG One Ton 4x4 Pickup with Snow Removal Attachments
Action Requested/Recommendation: Authorize the City Purchasing Division to Purchase a 2015 Ford F350 CNG Pickup with a Snow Plow, V box Spreader, and Arrow Board from AutoNation Ford Littleton, Colorado in the Amount of \$52,685.
Presenter(s) Name & Title: Jay Valentine, Internal Services Manager Darren Starr, Streets, Storm Water, and Solid Waste Manager

Executive Summary:

This request is for the purchase of a scheduled equipment replacement of the City's on call truck for the Streets and Storm Water Divisions. This replacement will also include attachments, snow plow, v-box spreader and arrow board, which will help with response to snow events and emergency call outs.

Background, Analysis and Options:

This on call truck is a part of the resources needed to provide ongoing maintenance in the Streets and Storm Water divisions. This equipment will be used for our everyday maintenance in addition to providing our department a vehicle to be used to service emergency call outs summer or winter. We will be equipping this truck with a front mount snow plow, and a V box spreader. This equipment will be used to respond to emergency area without removing snow equipment from its current route. This equipment can also be used to clear snow from parking areas owned, and maintained by the city. This is the first and only 4x4 equipment in the department. This equipment is a scheduled replacement for the department, and has gone through the equipment replacement committee.

A formal Invitation for Bids was issued via BidNet (an on-line site for government agencies to post solicitations) and advertised in The Daily Sentinel; three companies submitted formal bids, all of which were found to be responsive and responsible, in the following amounts:

COMPANY	YR/MAKE/MODEL	GAS COST	CNG COST
Autonation Ford Littleton	2015 Ford F-350	\$42,185.00	\$52,685.00
Barbee's Freeway Ford	2015 Ford F-350	\$45,045.00	\$55,445.00

Faricy Ford	2015 Ford F-350	\$43,120.00	\$55,170.00
-------------	-----------------	-------------	-------------

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 12: *Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.*

This purchase will positively affect the environment by using CNG. CNG burns just as clean as gasoline or diesel in new vehicles, and is much cleaner-burning compared to older gasoline or diesel powered vehicles, reducing ozone and other smog producing gases.

Dollars saved by using CNG instead of petroleum conserves tax dollars while dollars spent on CNG stay in Colorado to support jobs related to the natural gas industry.

Board or Committee Recommendation:

This equipment replacement was approved by the equipment committee, and the fleet Department.

Financial Impact/Budget:

Budgeted funds for this purchase have been accrued in the Fleet Replacement Internal Service Fund.

Legal issues:

No legal issues have been identified.

Other issues:

Pay back on the incremental cost of \$10,500 is 4.4 years for this vehicle based on the following:

- On average, this unit is driven 9,900 miles per year.
- Average fuel economy is 9.0 miles per gallon which translates into 1,110 gallons of fuel per year.
- Today's cost of unleaded = \$3.14 per gallon
- Today's cost for CNG = .98 per GGE reflecting a potential savings of \$2,398 per year.
- Life expectancy of this vehicle is 10-13 years which results in a potential savings over the life of the unit of \$20,672.

Previously presented or discussed:

Vehicle/equipment replacements were discussed during the 2014 budget process.

Attachments:

None.



CITY COUNCIL AGENDA ITEM

Date: 3/25/14
 Author: Jay Valentine
 Title/ Phone Ext: 1517

 Proposed Schedule: 4/2/14
 2nd Reading
 (if applicable): _____

 File # (if applicable): _____

Subject: Purchase of Three (3) CNG Utility Trucks
Action Requested/Recommendation: Authorize the City Purchasing Division to Award a Contract to Purchase 3 CNG Powered ¾ ton Utility Trucks from Johnson Auto Plaza in the Amount of \$115,740
Presenter(s) Name & Title: Jay Valentine, Internal Services Manager

Executive Summary:

This purchase is for the replacement of three units that are at the end of their useful life as determined by a life cycle cost analysis and approved by Fleet Services and the Vehicle Replacement Committee at the July 2013 meeting. These trucks will be for use in the Parks, Water Distribution and Stormwater Maintenance Divisions.

Background, Analysis and Options:

A formal solicitation was advertised on Rocky Mountain E-Purchasing System and in the Daily Sentinel and sent to a source list of manufacturers and dealers capable of providing complete trucks per our specifications. We requested bids for both gasoline and CNG powered engines. The CNG trucks are bi-fuel vehicles capable of running on both CNG and gasoline.

The purchase of these CNG utility trucks are also being used as a match in the DOLA awarded \$200,000 grant to build 10 additional time full fueling stations.

A formal Invitation for Bids was issued via BidNet (an on-line site for government agencies to post solicitations) and advertised in The Daily Sentinel; six companies submitted formal bids, all of which were found to be responsive and responsible, in the following amounts: The price reflects a total for all 3 units.

FIRM	LOCATION	COST GAS	COST CNG
Johnson Auto Plaza	Brighton, Colorado	\$103,485	\$115,740

Faricy Ford	Cañon City, Colorado	\$ 81,600	\$118,200
Auto Nation Ford	Littleton, Colorado	\$ 91,539	\$123,039
Fuoco Motors	Grand Junction, Colorado	\$101,895	N/A
Dellenbach Motors	Fort Collins, Colorado	\$ 98,325	N/A
Pueblo Dodge	Pueblo, Colorado	\$ 92,592	N/A

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 12: *Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.*

This purchase will positively affect the environment by using CNG. CNG burns just as clean as gasoline or diesel in new vehicles, and is much cleaner-burning compared to older gasoline or diesel powered vehicles, reducing ozone and other smog producing gases.

Dollars saved by using CNG instead of petroleum conserves tax dollars while dollars spent on CNG stay in Colorado to support jobs related to the natural gas industry.

Board or Committee Recommendation:

The Fleet Replacement Committee recommended the replacement of these vehicles.

Financial Impact/Budget:

Budgeted funds for this purchase have been accrued in the Fleet Replacement Internal Service Fund.

Legal issues:

There are no legal issues related to this purchase.

Other issues:

Pay back on the incremental cost of \$11,380 per vehicle is 5.3 years based on the following:

- On average, each of these units is driven 9,000 miles per year.
- Average fuel economy is 9 miles per gallon which translates into 1,000 gallons of fuel per unit.
- Today's cost of unleaded = \$3.14 per gallon
- Today's cost for CNG = .98 per GGE reflecting a potential savings of \$2,160.00 per year per unit.

- Life expectancy of these units is 10-13 years which results in a potential savings over the life of the unit of \$16,700 per unit.

Previously presented or discussed:

Replacement vehicle costs were discussed during budget workshops.

Attachments:

None.



Date: 3/28/15
 Author: Jay Valentine

 Title/ Phone Ext: 1517
 Proposed Schedule: _____
 2nd Reading
 (if applicable): ____
 File # (if applicable): _____

CITY COUNCIL AGENDA ITEM

Subject: Purchase Four (4) CNG Half Ton Pickup Trucks
Action Requested/Recommendation: Authorize the City Purchasing Division to Purchase 4 CNG Half Ton Pickup Trucks from Barbee’s Freeway Ford in the Amount of \$118,752.12
Presenter(s) Name & Title: Jay Valentine, Internal Services Manager

Executive Summary:

This purchase is for the replacement of four units that are at the end of their useful life as determined by a life cycle cost analysis and approved by Fleet Services and the Vehicle Replacement Committee at the July 2013 meeting. This request is for the purchase of 4 scheduled half ton pickup truck replacements for the Traffic, Storm Water Maintenance, Water Plant and Water Distribution Divisions.

Background, Analysis and Options:

These trucks are a part of the resources needed to provide ongoing maintenance in the Public Works and Utilities Department. The equipment will be used for our everyday maintenance and operations. This equipment is scheduled replacement for the departments, as determined by the equipment replacement committee.

These ½ ton pickup trucks, which will be the first CNG pickup trucks in the City’s fleet, will be bi-fuel vehicles which allow them to run on either CNG or gasoline.

A formal Invitation for Bids was issued via BidNet (an on-line site for government agencies to post solicitations) and advertised in The Daily Sentinel; nine companies submitted formal bids, all of which were found to be responsive and responsible, in the following amounts: The price reflects a total for all 4 units.

COMPANY	Location	YR/MAKE/MODEL	GAS COST	CNG COST
Barbee's Freeway Ford	Denver, CO	2014 Ford F-150	\$79,545.00	\$118,752.12
Autonation Ford	Littleton, CO	2014 Ford F-150	\$82,388.00	\$122,388.00
Grand Junction Chrysler, Jeep Dodge	Grand Junction, CO	2014 Ram 1500	\$82,840.00	No Bid
Pueblo Dodge	Pueblo, CO	2014 Ram 1500	\$83,184.00	No Bid
Fuoco Motors	Grand Junction, CO	2014 Nissan Titan	\$83,720.00	No Bid
Johnson Auto Plaza	Brighton, CO	2014 Ram 1500 Quad	\$87,596.00	No Bid

John Elway Chevrolet	Denver, CO	2014 Chevy Silverado	\$92,392.00	No Bid
Dellenbach Motors	Fort Collins, CO	2014 Chevy Silverado	\$96,036.00	No Bid
Purifoy Chevrolet	Fort Lupton, CO	2014 Chevy Silverado	\$100,040.80	No Bid

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 12: *Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.*

This purchase will positively affect the environment by using CNG. CNG burns just as clean as gasoline or diesel in new vehicles, and is much cleaner-burning compared to older gasoline or diesel powered vehicles, reducing ozone and other smog producing gases.

Dollars saved by using CNG instead of petroleum conserves tax dollars while dollars spent on CNG stay in Colorado to support jobs related to the natural gas industry.

Board or Committee Recommendation:

This equipment replacement was approved by the equipment committee, and the Fleet Department.

Financial Impact/Budget:

Budgeted funds for this purchase have been accrued in the Fleet Replacement Internal Service Fund.

Legal issues:

No legal issues have been identified.

Other issues:

Pay back on the incremental cost of \$9,802 per vehicle is 4.8 years for two of the four vehicles based on the following:

- On average, these two units are driven 10,000 miles per year.
- Average fuel economy is 10.5 miles per gallon which translates into 953 gallons of fuel per unit.
- Today's cost of unleaded = \$3.14 per gallon
- Today's cost for CNG = .98 per GGE reflecting a potential savings of \$2,058 per year per unit.
- Life expectancy of these units is 10-13 years which results in a potential savings over the life of the unit of \$16,954 per unit.

Pay back on the incremental cost of \$9,802 per vehicle is 6.4 years for the other two vehicles based on the following:

- On average, two of these units is driven 7,500 miles per year.
- Average fuel economy is 10.5 miles per gallon which translates into 714 gallons of fuel per unit.
- Today's cost of unleaded = \$3.14 per gallon
- Today's cost for CNG = .98 per GGE reflecting a potential savings of \$1,542 per year per unit.
- Life expectancy of these units is 10-13 years which results in a potential savings over the life of the unit of \$10,244 per unit.

Previously presented or discussed:

Need something here

Attachments:

None.



Date: _____
 Author: Dan Tonello
 Title/ Phone Ext: 4171
 Proposed Schedule: _____
 2nd Reading
 (if applicable): _____
 File # (if applicable): _____

CITY COUNCIL AGENDA ITEM

Subject: Purchase of Two Tandem Axle Dump Trucks with 13 Yard Dump Beds
Action Requested/Recommendation: Authorize the City Purchasing Division to Purchase Two CNG Tandem Axle Dump Trucks with 13 Cubic Yard Dump Beds from Trans West/McDonald of Grand Junction, in the amount of \$336,682.
Presenter(s) Name & Title: Jay Valentine, Internal Services Manager Dan Tonello Wastewater Services Manager

Executive Summary:

This request is for the purchase of the scheduled equipment replacement of two tandem axle dump trucks. The trucks will be used to replace two older trucks that have exceeded their reliable life expectancy. The trucks are used to haul bio-solids produced at the Persigo Treatment Facility to the Mesa County Landfill.

Background, Analysis and Options:

These two tandem axle 13 yard dump trucks are needed to deliver bio-solids produced at the Persigo Treatment Facility to the Mesa County Landfill. These two new trucks will replace two 1999 models that are no longer reliable. This is a scheduled replacement and has been reviewed by the equipment replacement committee.

A formal Invitation for Bids was issued via BidNet (an on-line site for government agencies to post solicitations) and advertised in The Daily Sentinel. Two companies submitted formal bids, all of which were found to be responsive and responsible. All vendors offered a trade-in allowance for the truck currently in the City's fleet. The following amounts reflect pricing after the trade-in is taken:

FIRM	LOCATION	DIESEL \$	CNG \$
Transwest – McDonald	Grand Junction, CO	\$237,466	\$336,682
Transwest - Layton	Grand Junction, CO	\$243,734	\$342,950
Transwest - Kois	Grand Junction, CO	\$255,948	\$355,164
Volvo of Denver Mack - McDonald	Denver, CO	\$258,756	N/A
Volvo of Denver Mack – Auto Group	Denver, CO	\$265,024	N/A

Volvo of Denver Mack – Kois	Denver, CO	\$277,238	N/A
-----------------------------	------------	-----------	-----

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 12: *Being a regional provider of goods and services the City and County will sustain, develop and enhance a healthy, diverse economy.*

This purchase will positively affect the environment by using CNG. CNG burns just as clean as gasoline or diesel in new vehicles, and is much cleaner-burning compared to older gasoline or diesel powered vehicles, reducing ozone and other smog producing gases.

Dollars saved by using CNG instead of petroleum conserves tax dollars while dollars spent on CNG stay in Colorado to support jobs related to the natural gas industry.

Board or Committee Recommendation:

This equipment replacement was approved by the equipment committee and Fleet Services.

Financial Impact/Budget:

Budgeted funds for the diesel option have been accrued in the Fleet Replacement Internal Service Fund. The Persigo Waste Water fund will cover the incremental cost of \$99,216 which may have to be budgeted through a supplemental appropriation.

Legal issues:

There are no legal issues associated with the recommended purchase.

Other issues:

Pay back on the incremental cost of \$49,608 per vehicle is 9.3 years these dump trucks based on the following:

- On average, each of these units burn and average of 2,100 gallons of diesel per year.
- Today’s cost of diesel = \$3.53 per gallon
- Today’s cost for CNG = .98 per GGE reflecting a potential savings of \$5,355 per year per unit.
- Life expectancy of these units is 12 -15 years which results in a potential savings over the life of the unit of \$30,717 per unit.

Previously presented or discussed:

Vehicle/equipment replacements were discussed during the 2014 budget process.

Attachments:

None.



Date: 3/24/14
 Author: Sonya Evans
 Title/ Phone Ext: Finance
 Supervisor Ext. 1522
 Proposed Schedule: March 19th, 2014
 2nd Reading
 (if applicable): April 2nd, 2014
 File # (if applicable): _____

Attach 6
CITY COUNCIL AGENDA ITEM

Subject: 2014 Supplemental Appropriation Ordinance
Action Requested/Recommendation: Hold a Public Hearing to Consider Final Passage and Final Publication in Pamphlet Form
Presenter(s) Name & Title: Jodi Romero, Financial Operations Director

Executive Summary:

This request is to appropriate certain sums of money to defray the necessary expenses and liabilities of the accounting funds of the City of Grand Junction for major capital projects.

Background, Analysis and Options:

Supplemental appropriations are required to ensure adequate appropriation by fund. Capital projects that are budgeted and appropriated in a prior year but are not completed in that year, require the funds be re-appropriated in the next year in order to complete the project. Also if a new project or a change of project scope is authorized by City Council a supplemental appropriation is also required for the legal authority to spend the funds required.

This 2014 supplemental appropriation is required in order to appropriate additional funds for the completion and scope expansion of the Avalon Theatre Core Renovation Project as approved by Council on March 5th, 2014. There are also several project carry-forwards from 2013 as well as a few new projects funded by associated revenues for 2014 as detailed below by fund:

The **General Fund 100** requires a supplemental appropriation of \$923,012; \$843,012 for the establishment of Avalon Theatre Core Contingency authorized by Resolution No. 04-14; and \$80,000 for the transfer of 1% For the Arts to the Major Capital Improvements Fund for the Avalon project.

The **Parkland Expansion Fund 105** requires a supplemental appropriation of \$21,284 for transfer to the Sales Tax Capital Improvement Fund for the carryforward of the 2013 approved Matchett Park Master Plan.

The **Sales Tax Capital Improvements Fund** requires a supplemental appropriation of \$566,673 for the carryforward of several 2013 approved projects as well as fully funded new projects. The carryforward projects consist of Contract Street Maintenance \$195,670; Wingate Park Pump and Irrigation System \$150,176; Lincoln Park Pool ADA Renovation \$8,408; Matchett Park Master Plan \$82,670; and a transfer of \$29,967 to the Storm Drainage Improvement Fund for the 2013 approved Avalon and Coorstek Inlet projects. The new projects consist of 24 ½ Road drainage project for the GVT station for \$21,782 fully funded by the County; improvements to Lincoln Park tennis courts area of \$18,000 paid for in full with a USTA Grant; and improvements to the Lincoln Park track and field areas to comply with NCAA standards approved and fully funded by PIAB for \$60,000 (cost of project includes outside contract, materials, and City staff time).

The **Storm Drainage Improvements Fund** requires a supplemental appropriation of \$29,967 for the carryforward of two 2013 approved projects; the Avalon storm drainage project for \$3,967; and the Coorstek Inlet project for \$26,000.

The **Major Capital Improvements Fund** requires a supplemental appropriation of \$2,559,631 for carryforward of 2013 approved projects and the scope expansion of the Avalon Theatre Core Renovation Project. The remaining building contingency authorized in 2013 will be carried forward in the amount of \$240,780 for continued acoustical work on the Public Safety Building; \$856,791 will be carried forward from the scope of the Avalon project authorized but not completed in 2013; and \$1,462,060 is required for the scope expansion of the Avalon project authorized by City Council via resolution No. 04-14.

The **Transportation Capacity Improvements Fund** requires a supplemental appropriation of \$239,967 for the carryforward of the 2013 approved I-70/Exit 26 Interchange project.

The **Water Fund** requires a supplemental appropriation of \$234,181 for the carryforward of 2013 approved projects and the expansion of the Water Tank Painting project heard and approved by City Council on February 19th, 2014. The carryforward consists of \$7,513 for Flowline/Pipe replacement; \$25,217 for the Somerville/Anderson Ranch improvements; and \$177,278 for the Water Tank Painting project. The amount needed for the scope expansion of the Water Tank Painting project is \$24,173.

The **Equipment Fund** requires a supplemental appropriation of \$1,260,869 for 2013 approved equipment purchases that were not received in 2013. There were seven items including a fire truck, a trash truck, and two dump trucks.

The **Communications Center Fund** requires a supplemental appropriation of \$575,917 for the carryforward of 2013 approved projects. They consist of \$11,350 for paging equipment; \$67,492 for CAD system; \$272,145 for 800 MHZ Radio Infrastructure in Collbran (grant funded); and \$224,930 for a repeater in the Redlands.

The ***Sewer System Fund*** requires a supplemental appropriation of \$605,754 for the carryforward of 2013 approved projects; \$195,260 for the Persigo Influent Slide Gate Replacement; and \$410,494 for sewer line replacements.

How this item relates to the Comprehensive Plan Goals and Policies:

This action is needed to meet the plan goals and policies.

Board or Committee Recommendation:

None

Financial Impact/Budget:

The supplemental appropriation ordinance is presented to ensure adequate appropriation by fund.

Legal issues:

The ordinance has been drawn, noticed, and reviewed in accordance with the Charter.

Other issues:

None known at this time

Previously presented or discussed:

The 2013 capital projects were reviewed and approved as part of the budget development process and adoption of the 2013 Budget. The Avalon Theatre Core Project was last discussed by City Council on March 5th, 2014.

Attachments:

Proposed Supplemental Appropriation Ordinance for 2014 Budget

ORDINANCE NO. ____

**AN ORDINANCE MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2014
BUDGET OF THE CITY OF GRAND JUNCTION**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

That the following sums of money be appropriated from unappropriated fund balance and additional revenues to the funds indicated for the year ending December 31, 2014, to be expended from such funds as follows:

Fund Name	Fund #	Appropriation
General	100	\$ 923,012
Parkland Expansion	105	\$ 21,284
Sales Tax Capital Improvements	201	\$ 566,673
Storm Drainage Improvements	202	\$ 29,967
Major Capital Improvements	204	\$ 2,559,631
Transportation Capacity Improvements	207	\$ 239,967
Water	301	\$ 234,181
Equipment	402	\$ 1,260,869
Communication Center	405	\$ 575,917
Joint Sewer System	900	\$ 605,754

INTRODUCED AND ORDERED PUBLISHED IN PAMPHLET FORM this 19th day of March, 2014.

TO BE PASSED AND ADOPTED AND ORDERED PUBLISHED IN PAMPHLET FORM this ____ day of _____, 2014.

Attest:

President of the Council

City Clerk



Attach 7

CITY COUNCIL AGENDA ITEM

Date: March 12, 2014

Author: Brian Rusche

Title/ Phone Ext:

Senior Planner / 4058

Proposed Schedule: 1st

Reading, March 19, 2014

2nd Reading: April 2, 2014

File #: RZN-2014-59

Subject: Kelley Drive Rezone, Located at 2607 and 2609 Kelley Drive

Action Requested/Recommendation: Hold a Public Hearing to Consider Final Passage and Final Publication in Pamphlet Form

Presenter(s) Name & Title: Brian Rusche, Senior Planner

Executive Summary:

Request to rezone two parcels, totaling 2.749 acres located at 2607 and 2609 Kelley Drive from an R-R (Residential Rural) to an R-1 (Residential 1 du/ac) zone district.

Background, Analysis and Options:

The requested rezone includes two (2) parcels, located at 2607 and 2609 Kelley Drive. Both parcels were created in 1956 as Lot 3 and Lot 4, respectively, of the replat of Sunny Knoll Subdivision. The residence at 2607 Kelley was constructed in 1976. Lot 4 was recently sold. The new owner of 2609 Kelley Drive has obtained a permit to construct a new residence.

Both parcels were annexed in 2000 as part of the G Road North Enclave and were zoned RSF-R, now known as R-R (Residential Rural), at the time of annexation.

The applicants are requesting a rezone to the R-1 (Residential 1 du/ac) zone district. The primary reason is to reduce the building envelope on each lot to allow for future accessory structures that are not feasible within the current building envelope. The R-R (Residential Rural) zone establishes a minimum side yard and rear yard setback of 50 feet. This restricts the building envelope to essentially the center of each lot.

The request to rezone the property to R-1 (Residential 1 du/ac) would allow the construction of accessory structure(s) closer to the corner(s) of the lot(s) with a 5 foot side yard and 10 foot rear yard setback for accessory structures.

The rezone will also resolve an existing nonconformity in that the minimum lot size will be one (1) acre; the properties are 1.298 and 1.459 acres, respectively.

Neighborhood Meeting:

A neighborhood meeting was held on February 4, 2014. Six neighbors attended, expressing general support for the proposal to rezone the property. Regarding the impact of the rezone to the keeping of agricultural animals on adjacent properties, these existing rights will not be impacted by the zone change, consistent with the "first in time" provision in GJMC Section 21.04.030(a).

How this item relates to the Comprehensive Plan Goals and Policies:

The Comprehensive Plan Future Land Use designation of the property is Residential Low (0.5-2 du/ac). The proposed zoning of R-1 (Residential 1 du/ac) will implement this land use designation and is consistent with the Comprehensive Plan.

This request is consistent with the following Goals and Policies of the Comprehensive Plan:

Goal 3: The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community.

The proposed rezoning of the property will create an opportunity for customary accessory structures on two existing residential lots, adding value to each.

Goal 5: To provide a broader mix of housing types in the community to meet the needs of a variety of incomes, family types and life stages.

The properties are sufficiently large enough to have residences that are similar in size and scale to the neighborhood, but are constrained from constructing customary accessory structures to accompany these residences, reducing the value of the properties.

Goal 7: New development adjacent to existing development should transition itself by incorporating appropriate buffering.

The purpose of the R-1 (Residential 1 du/ac) zone is to provide for low density residential uses in close proximity to existing large lot single-family development. Properties to the north and west are already zoned R-1, while properties to the east will remain zoned Estate and Rural, making R-1 an appropriate transition between the two.

Board or Committee Recommendation:

The Planning Commission unanimously recommended approval of the requested R-1 (Residential 1 du/ac) zone district at their regular meeting on March 11, 2014.

Financial Impact/Budget:

This rezone action has no direct financial impact on the City budget.

Legal issues:

The keeping of agricultural animals on adjacent properties, specifically 2611 Kelley Drive, will not be impacted by the zone change, consistent with the “first in time” provision in GJMC Section 21.04.030(a).

Other issues:

There are no other issues.

Previously presented or discussed:

First Reading of the zoning ordinance was on March 19, 2014.

Attachments:

Background Information/Analysis/Findings and Conclusions
Site Location Map
Aerial Photo Map
Comprehensive Plan Map
Existing City Zoning Map
Blended Residential Map
General Project Report
Neighborhood Meeting summary
Animal Regulations section
Ordinance

BACKGROUND INFORMATION					
Location:		2607 and 2609 Kelley Drive			
Applicants:		Mark and Angela Bunnell (2607) Stephen Stremel (2609)			
Existing Land Use:		Single-family Residential			
Proposed Land Use:		Single-family Residential			
Surrounding Land Use:	North	Single-family Residential			
	South	Single-family Residential			
	East	Single-family Residential			
	West	Single-family Residential			
Existing Zoning:		R-R (Residential Rural)			
Proposed Zoning:		R-1 (Residential 1 du/ac)			
Surrounding Zoning:	North	R-1 (Residential 1 du/ac)			
	South	PD (Planned Development)			
	East	R-E (Residential Estate)			
	West	R-1 (Residential 1 du/ac)			
Future Land Use Designation:		Residential Low (0.5-2 du/ac)			
Blended Residential Land Use Categories Map (Blended Map):		Residential Low (Rural – 5 du/ac)			
Zoning within density range?		X	Yes		No

ANALYSIS:

Background:

The requested rezone includes two (2) parcels, located at 2607 and 2609 Kelley Drive. Both parcels were created in 1956 as Lot 3 and Lot 4, respectively, of the replat of Sunny Knoll Subdivision. The residence at 2607 Kelley was constructed in 1976. It appears that the home and both lots, along with unplatted property to the south for a total of 2.749 acres, were under common ownership for a number of years. Lot 4 was recently sold and therefore separated from the rest of the property. The new owner of 2609 Kelley Drive has obtained a permit to construct a new residence.

Both parcels were annexed in 2000 as part of the G Road North Enclave and were zoned RSF-R, now known as R-R (Residential Rural), at the time of annexation.

The applicants are requesting a rezone to the R-1 (Residential 1 du/ac) zone district. The primary reason is to reduce the building envelope on each lot to allow for future accessory structures that are not feasible within the current building envelope. The R-R

(Residential Rural) zone establishes a minimum lot size of five (5) acres and a minimum side yard and rear yard setback of 50 feet. This restricts the building envelope to essentially the center of each lot, as illustrated in the General Project Report.

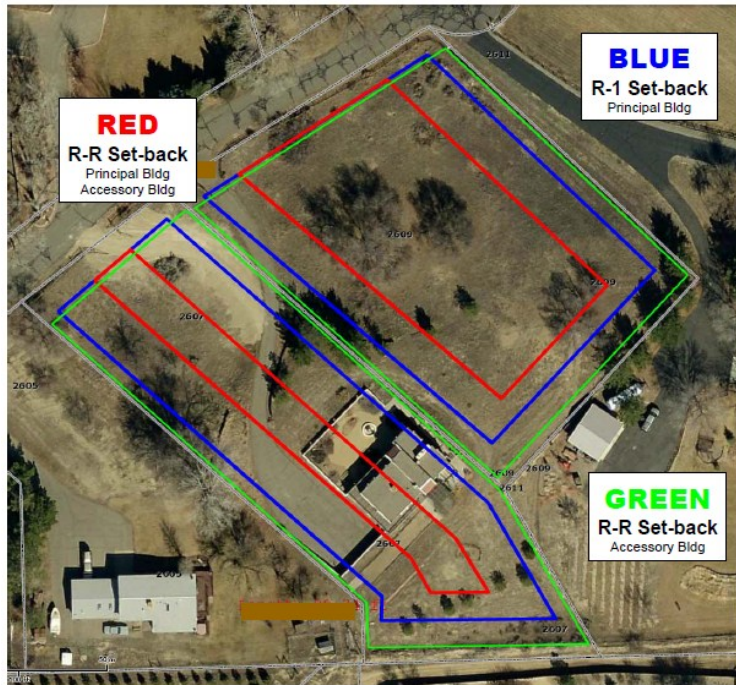


Figure 3 - Impact of Building Set-backs: R-R versus R-1

The request to rezone the property to R-1 (Residential 1 du/ac) would allow the construction of accessory structure(s) closer to the corner(s) of the lot(s) with a 5 foot side yard and 10 foot rear yard setback for accessory structures.

The rezone will also resolve an existing nonconformity in that the minimum lot size will be one (1) acre; the properties are 1.298 and 1.459 acres, respectively.

The proposed rezone will reduce a legal nonconformity at 2907 Kelley, where the existing residence (principal structure) is less than 50 feet from the side property line. The proposed residence at 2609 Kelley will meet the current R-R standards, which require the larger setback for principal structures (50' side and 50' rear yard) than the proposed R-1 zone (15' side yard and 30' rear yard). The residence will be fully conforming to the R-1 standards by having a larger than required setback should the zone change be approved.

The purpose of the R-1 (Residential 1 du/ac) zone district, as outlined in Grand Junction Municipal Code (GJMC) Section 21.03.070(c)(1) is "to provide areas for low density residential uses in less intensely developed areas. R-1 tracts should abut or be in close proximity to existing large lot single-family development, making R-1 an appropriate transition district between rural and higher density areas".

Neighborhood Meeting:

A neighborhood meeting was held on February 4, 2014. Six neighbors attended, expressing general support for the proposal to rezone the property in order to make room for accessory structures on each lot. A question was asked regarding the impact of the rezone to the keeping of agricultural animals, specifically at the property at 2611 Kelley Drive, which has established animal enclosures and a lease for agricultural grazing. These rights will not be impacted by the zone change, consistent with the “first in time” provision in GJMC Section 21.04.030(a).

Consistency with the Comprehensive Plan:

This request is consistent with the following Goals and Policies of the Comprehensive Plan:

Goal 3: The Comprehensive Plan will create ordered and balanced growth and spread future growth throughout the community.

The proposed rezoning of the property will create an opportunity for customary accessory structures on two existing residential lots, adding value to each.

Goal 5: To provide a broader mix of housing types in the community to meet the needs of a variety of incomes, family types and life stages.

The properties are sufficiently large enough to have residences that are similar in size and scale to the neighborhood, but are constrained from constructing customary accessory structures to accompany these residences, reducing the value of the properties.

Goal 7: New development adjacent to existing development should transition itself by incorporating appropriate buffering.

The purpose of the R-1 (Residential 1 du/ac) zone is to provide for low density residential uses in close proximity to existing large lot single-family development. Properties to the north and west are already zoned R-1, while properties to the east will remain zoned Estate and Rural, making R-1 an appropriate transition between the two.

The Comprehensive Plan Future Land Use designation of the property is Residential Low (0.5-2 du/ac). The proposed zoning of R-1 (Residential 1 du/ac) will implement this land use designation and is consistent with the Comprehensive Plan.

Section 21.02.140 of the Grand Junction Zoning and Development Code:

Zone requests must meet at least one of the following criteria for approval:

(1) Subsequent events have invalidated the original premise and findings;

The Comprehensive Plan, adopted in 2010, designated the property as Residential Low, with a density range of 0.5 to 2 dwelling units per acre, which translates into one-half to two acre lots.

The existing zoning on the property, which originated from its annexation into the City in 2000, is Residential Rural, which requires five acre lots. The existing properties are 1.298 and 1.459 acres, respectively.

This criterion has been met.

(2) The character and/or condition of the area has changed such that the amendment is consistent with the Plan;

The character of the area consists of large lot and estate properties, each with a single-family residence. The construction of a new residence on Lot 4 will be the first development to the area in many years. The two subject lots are the only ones which do not meet the minimum lot size of their zone, as the lots were created prior to the zoning. While the size of the lots has remained the same since 1956, the owners are requesting the rezone to allow customary accessory structures (similar to their neighbors) to accompany their residences.

The east end of the cul-de-sac includes larger estate properties, including land designated, through fencing, for livestock grazing. Agricultural animals are permitted in both the Rural and R-1 zone, pursuant to GJMC Section 21.04.030(a). Specifically, the property at 2611 Kelley Drive has established animal enclosures and a lease for agricultural grazing, which will not be impacted by the new residence or the zone change, consistent with the "first in time" provision in the above section.

This criterion has been met.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed;

There are public utilities already connected to the existing residence, including potable water provided by the Ute Water Conservancy District, sanitary sewer service maintained by the City, and electricity from Grand Valley Power (a franchise utility). The new residence will be connecting to these utilities as well.

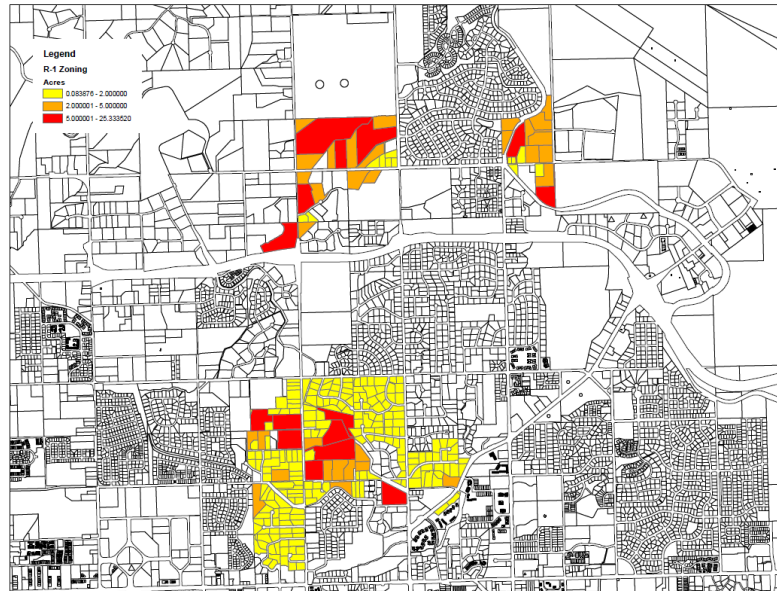
The property is near the end of a cul-de-sac, which has direct access to 26 Road (1st Street), which extends south into the City via an overpass on I-70. H Road is to the north, which extends east to the Grand Junction Regional Airport. A church and future park (Saccomanno) are located at the intersection of 26 ½ Road (7th Street) and H Road east of the site.

This criterion has been met.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use;

R-1 zoned properties within the City are located in two distinct groups: a one (1) square mile section centered along 26 Road between Patterson Road and G Road, and north of I-70 along 26 Road to H Road then east to 27 ¼ Road. Three (3) individual parcels on the Redlands are also zoned R-1.

As of February 13, 2014 there was a total of 461.9 acres of R-1 zoned property within the City [comprising 263 parcels – 8 of which are institutional/tax exempt]. Since the maximum density within this zone is one (1) dwelling unit per acre, the R-1 zone can legally accommodate only 462 dwelling units. The 2010 census showed Grand Junction with 26,170 housing units (with more constructed since). Therefore, the share of dwelling units allocated to R-1 properties is less than 1.77% of the entire existing housing stock.



This criterion has been met.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment.

The proposed R-1 zone would implement Goal 3, 5, and 7 of the Comprehensive Plan as described earlier.

This criterion has been met.

Alternatives: In addition to the zoning that the petitioner has requested, the following zone districts would also be consistent with the Comprehensive Plan designation for the subject property:

- a. R-R (Residential Rural)
- b. R-E (Residential Estate)
- c. R-2 (Residential – 2 du/ac)

- d. R-4 (Residential – 4 du/ac)
- e. R-5 (Residential – 5 du/ac)

The existing lots exceed the maximum density of the existing Rural zone district.

The Estate zone district has similar standards as the R-1 zone, but is used for properties that may not have access to sanitary sewer.

The R-2 through R-5 zones would increase the density and be inconsistent with the character of the neighborhood. No new lots will be created as a result of the zone change to R-1; only the setback standards will change.

It is my professional opinion that extending the R-1 zone to these properties will achieve not only the goals of the Comprehensive Plan but will provide a suitable transition for that, through established development standards, provides compatibility with the adjacent neighborhood.

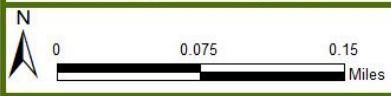
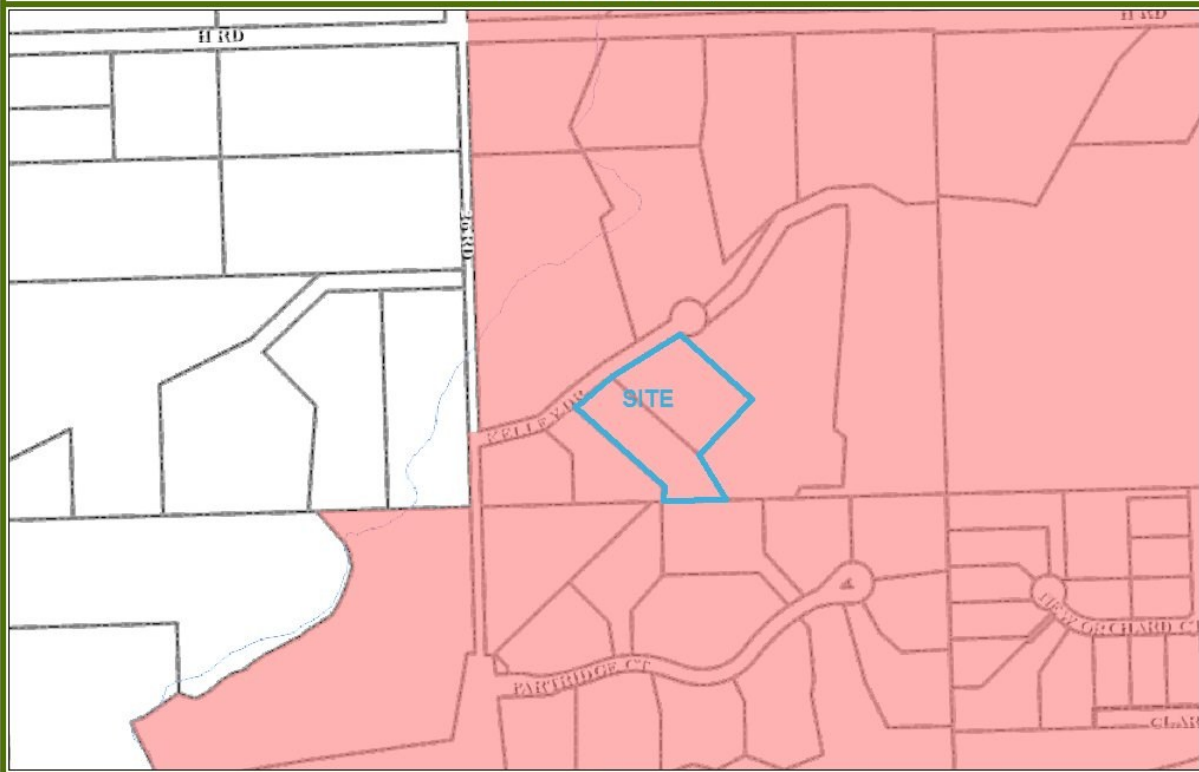
If the City Council chooses to recommend one of the alternative zone designations, specific alternative findings must be made supporting the recommendation.

FINDINGS OF FACT/CONCLUSIONS:

After reviewing the Kelley Drive Rezone, RZN-2014-59, a request to rezone the property at 2607 and 2609 Kelley Drive from R-R (Residential Rural) to R-1 (Residential 1 du/ac), the following findings of fact and conclusions have been determined:

1. The requested zone is consistent with the goals and policies of the Comprehensive Plan.
2. The review criteria in Section 21.02.140 of the Grand Junction Municipal Code have all been met.

Site Location Map

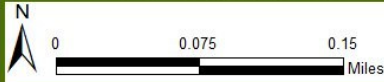
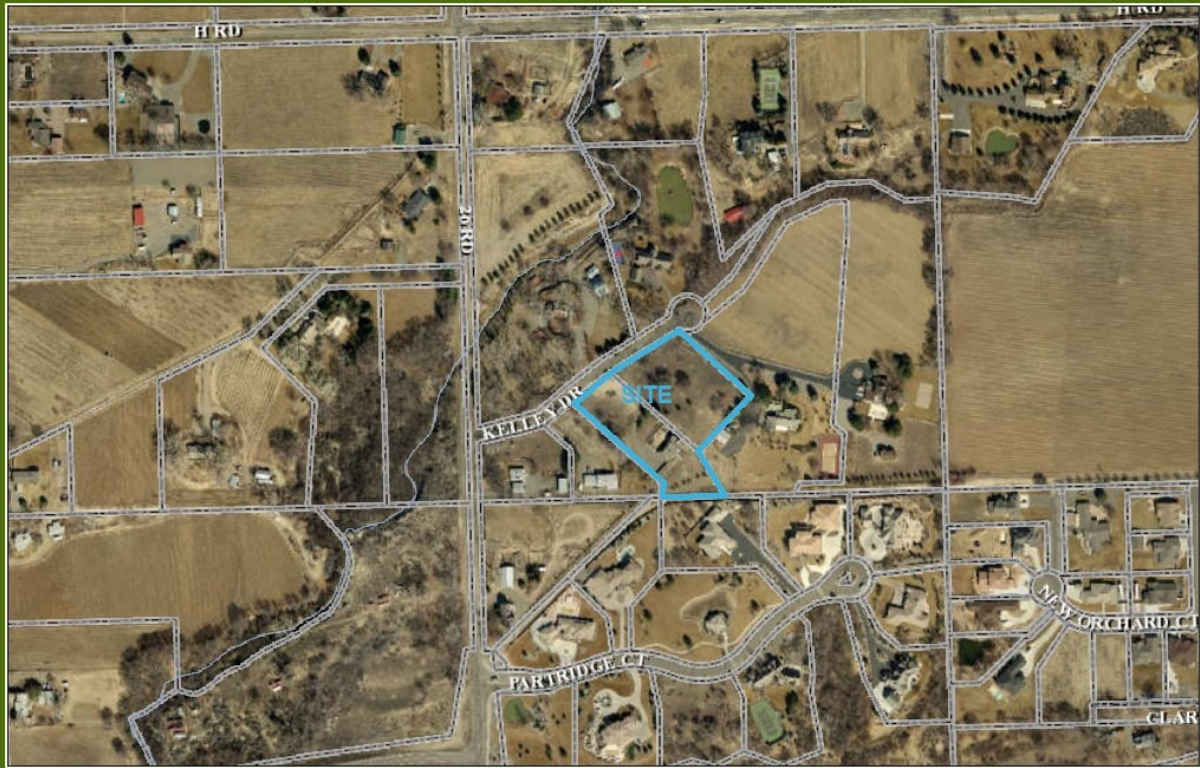


Printed: 2/18/2014

1 inch = 313 feet



Aerial Photo Map

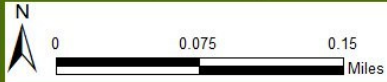
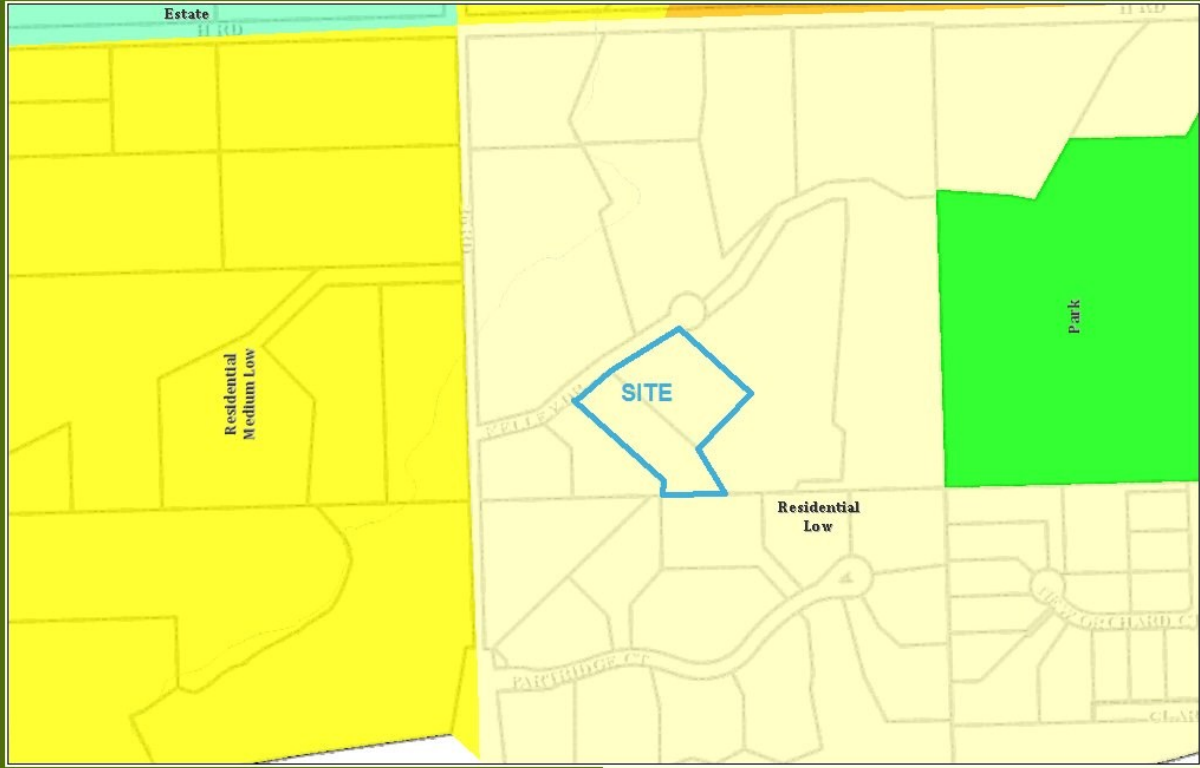


Printed: 2/18/2014

1 inch = 313 feet



Comprehensive Plan Future Land Use Map

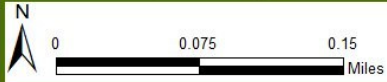
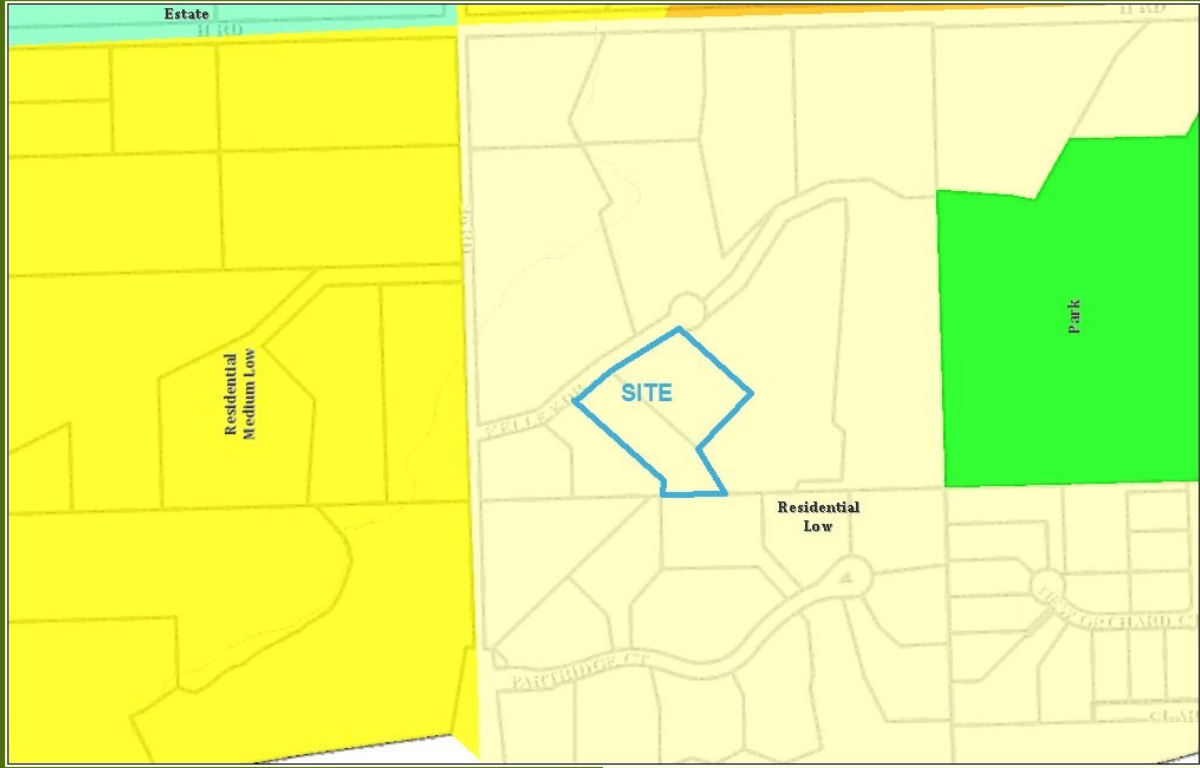


Printed: 2/18/2014

1 inch = 313 feet



Comprehensive Plan Future Land Use Map

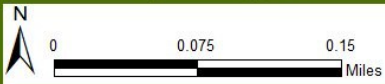
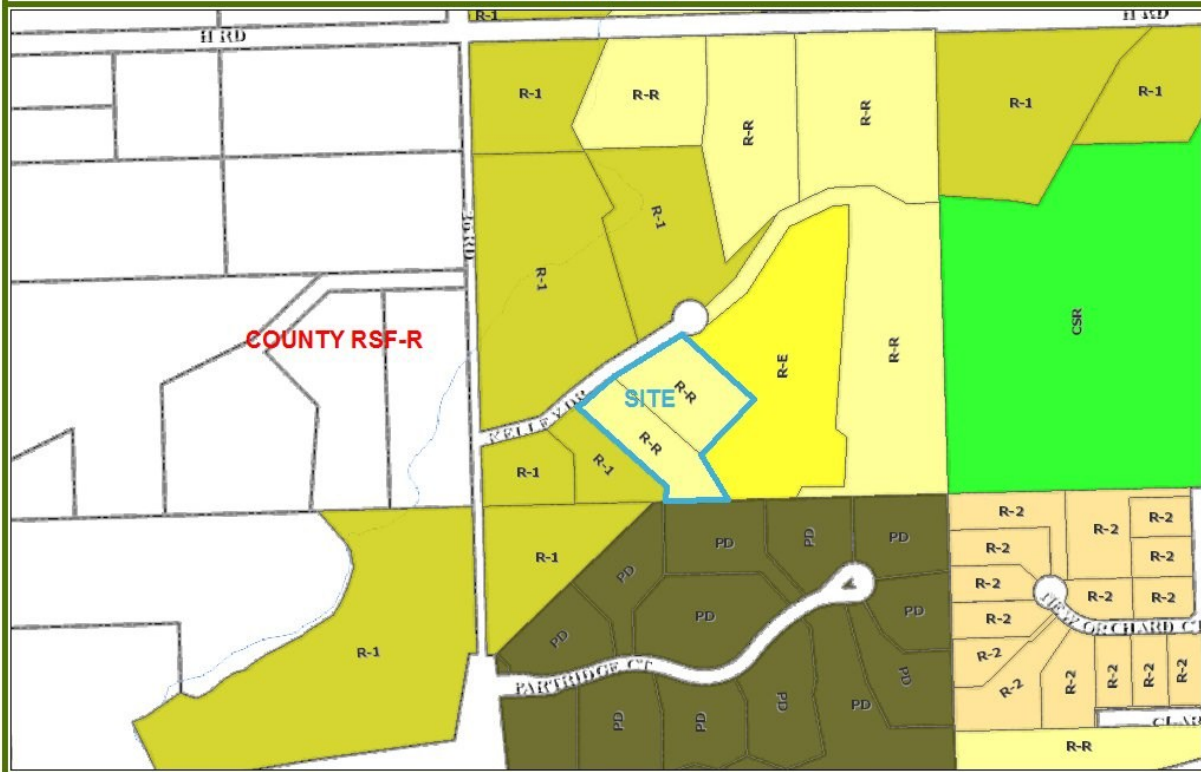


Printed: 2/18/2014

1 inch = 313 feet



Zoning Map

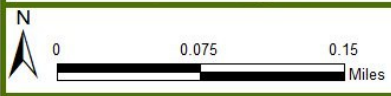
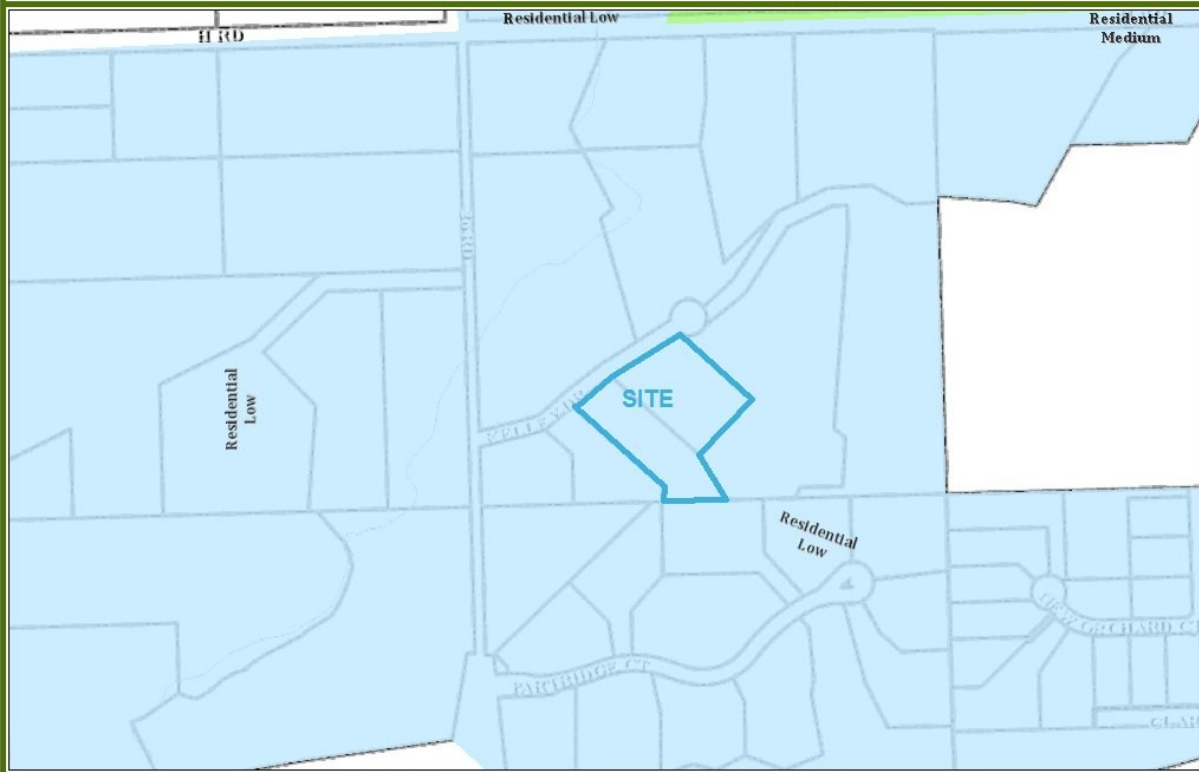


Printed: 2/18/2014

1 inch = 313 feet



Blended Residential Land Use Category Map



Printed: 2/18/2014

1 inch = 313 feet



Rezone 2607 and 2609 Kelley Drive

from R-R to R-1

A. Project Description

A1. Location

See Figures 1 and 2

A2. Acreage

See Figure 2

A3. Proposed use

Existing use = residential, R-R zoning

Proposed use = residential, R-1 zoning

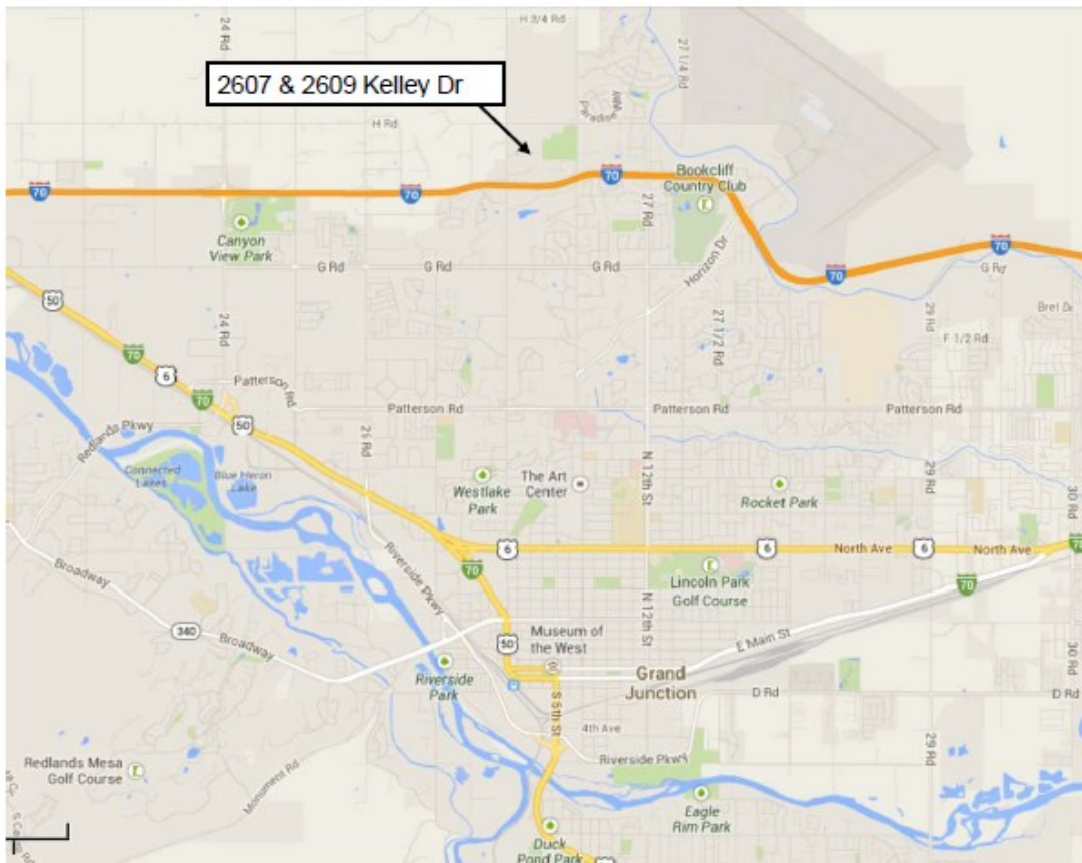


Figure 1 - Location Map



Figure 2 - Location Map (Zoom In)

B. Public Benefit

The properties are currently zoned R-R, which requires a minimum lot size of 5-acres. As shown in Figure 2, neither of the lots meet the 5-acre minimum. R-1 zoning is more appropriate for these properties considering that they are 1.30-acres and 1.45-acres. The rezone will not allow for additional residential units to be constructed. These two lots will only have one residential house per lot with or without the rezone.

In addition, the R-R zoning building set-backs (20-ft for the front & 50-ft for the sides & rear) are geared toward 5-acre minimum lots. When applied to these lots that are significantly smaller than 5-acres, the R-R building set-backs would require the principal building (house) and accessory building (shed) to be crammed into the middle of the lot. The building set-backs for R-1 zoning are more suited to these smaller lots, such that the principal building (house) and accessory building (shed) can be spread out a little, creating a better visual appeal for the surrounding neighbors. Figure 3 shows the building set-backs for R-R and R-1.



Figure 3 - Impact of Building Set-backs: R-R versus R-1

C. Neighborhood Meeting

A neighborhood meeting was held Tuesday, February 4, 2014 at 5:30 pm at 2607 Kelley Drive. The attached sign-in sheet shows the attendees.

D. Project Compliance, Compatibility, and Impact

D1. Adopted plans and/or policies

Refer to Section B for the justification for the rezone.

D2. Land use in the surrounding area

See Figure 4

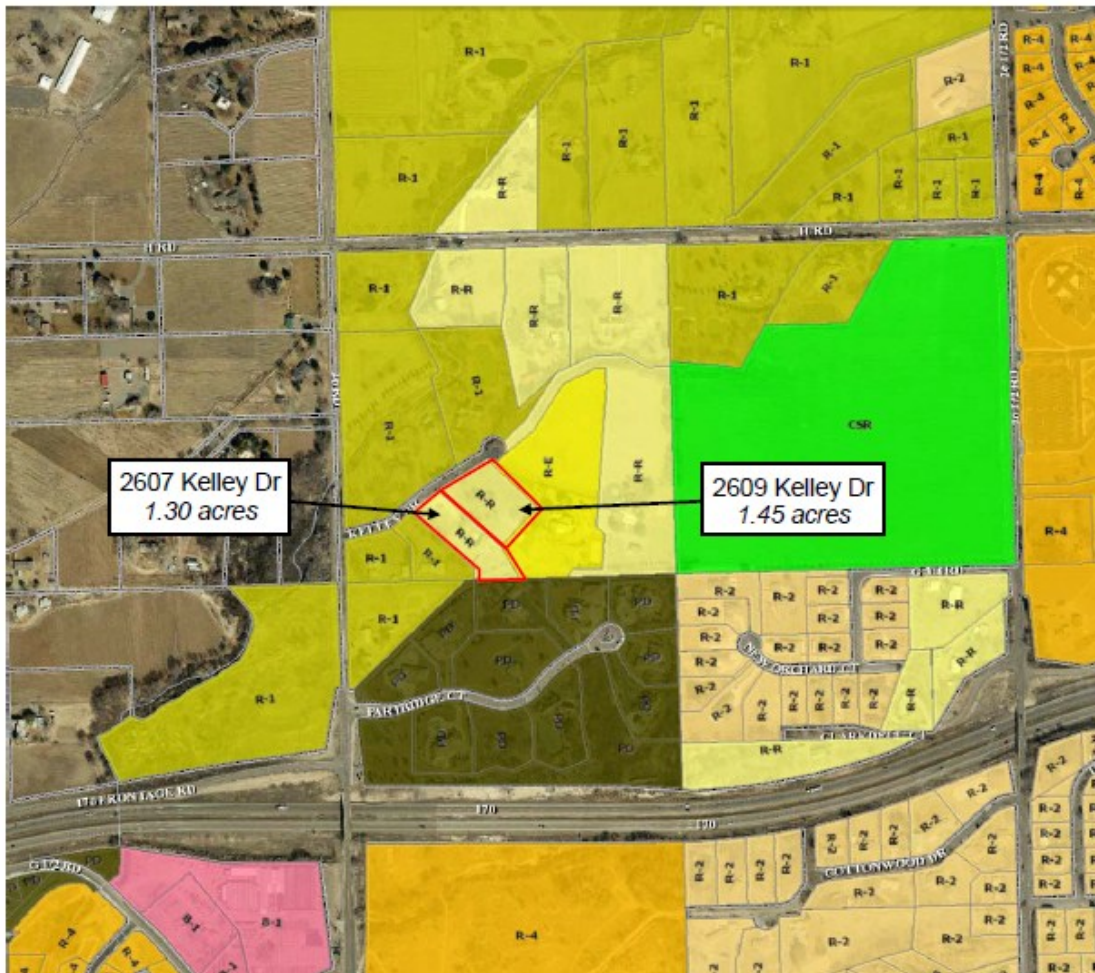


Figure 4 - Adjacent Land Use (Zoning)

D3. Site access and traffic patterns

Both properties have access to Kelley Drive, which then connects to 26 Road.

The requested rezone from R-R to R-1 will not increase the number of residential units; there will only be two residential units with or without the rezone. This means that there will be no change or impact to the following items:

D4. Availability of utilities, including proximity of fire hydrants

D5. Special or unusual demands on utilities

D6. Effects on public facilities

D10. Site soils and geology

D11. Impact of project on site geology and geological hazards

The properties are residential so the following items are not applicable:

D7. Hours of operation

D8. Number of employees

D9. Signage plans

E. Approval Criteria in Zoning & Development Code

(1) Subsequent events have invalidated the original premise and findings

As shown in Figure 4, much of the property in this area is zoned R-1, such that the rezone to R-1 will be consistent with the zoning in this area.

(2) The character and/or conditions of the area has changed such that the amendment is consistent with the Plan

As shown in Figure 4, much of the property in this area is zoned R-1, such that the rezone to R-1 will be consistent with the zoning in this area.

(3) Public and community facilities are adequate to serve the type and scope of land use proposed

Not applicable; the requested rezone from R-R to R-1 will not increase the number of residential units; there will only be two residential units with or without the rezone. This means that there will be no change or impact to public or community facilities.

(4) An inadequate supply of suitably designated land is available in the community, as defined by the presiding body, to accommodate the proposed land use

Not applicable; the major factor behind the requested rezone is to change the required building set-backs to better match the lot size.

(5) The community or area, as defined by the presiding body, will derive benefits from the proposed amendment

The R-R zoning building set-backs (20-ft for the front & 50-ft for the sides & rear) are geared toward 5-acre minimum lots. When applied to these lots that are significantly smaller than 5-acres, the R-R building set-backs would require the principal building (house) and accessory building (shed) to be crammed into the middle of the lot. The building set-backs for R-1 zoning are more suited to these smaller lots, such that the principal building (house) and accessory building (shed) can be spread out a little, creating a better visual appeal for the surrounding neighbors. Figure 3 shows the building set-backs for R-R and R-1.

F. Development Schedule and Phasing

2607 Kelley Drive: There is an existing house on this lot; there are no immediate plans for constructing an accessory building (shed).

2609 Kelley Drive: This is a vacant lot; the owner plans to construct a house and an accessory building (shed) as soon as possible.

Neighborhood Meeting – February 4, 2014 @ 5:30 pm

Proposed Kelley Drive Rezone

Located at 2607 and 2609 Kelley Drive

Existing Zoning is R-R (Residential Rural)

Proposed Zoning is R-1 (Residential 1 du/ac)

Future land Use Designation is Residential Low (0.5 – 2 du/ac)

Please Sign In

Name	Address	Contact info
Billy Baker	2611 Kelley	2426199
Donna Baker	2611 Kelley	2426199
Steve Stramel	2609 Kelley	640-3312
Brian Rusche	250 N. 5th St.	256-4058
Herb & Beth Mooney	2613 Kelley Dr	241-9832
Mark Bunnell	2607 Kelley Dr.	433-7673
Angela Bunnell	2607 Kelley Dr.	433-7673
Stella Shauks	2606 Kelley Dr.	243-8656
Vernon Kiz	2610 Kelley Dr.	241-1496

From: Steve Stremel <shomesllc@gmail.com>
To: Brian Rusche <brianr@ci.grandjct.co.us>
Date: 2/5/2014 8:14 AM
Subject: neighborhood meeting

On 2/4/14 @ 5:30pm we held a neighborhood @ 2607 Kelley Dr. Six property owners were present, Mark Bunnell and I explained why we are requesting that our lots be rezoned from "RR" to "R-1", that is so we can build a secondary structure closer to the property line then 50' as is required in the R-R zoning, changing to the R-1 zoning would let the secondary structure be within 10' of the property line.

One neighbor was concerned it would changed the fact that they have some farm animals, You told them that they not be impacted as they would be grandfather in with their rights.

No one else had concerns about the rezoning and seem to be in favor of the change.

Thanks for attending, Steve Stremel

21.04.030 Use-specific standards.

(a) Animal Regulations.

(1) Purpose and Scope.

(i) This subsection provides rules and regulations for the keeping of agricultural animals, household pets and other animals. Keeping of animals shall not become a nuisance, hazard and/or create a public health problem.

(ii) Animal uses such as feedlots, zoos, kennels and veterinary/animal hospitals are specifically identified in the use table and shall be administered by the provisions of this chapter.

(2) Nonconforming Use. The existing, lawful use of a premises or structure, used for the keeping of animals, which is not in conformance with the provisions of this code, may be continued, subject to the following:

(i) No use may be expanded or enlarged, except in conformance with this code;

(ii) If a nonconforming use is discontinued for 12 consecutive months, any future use shall fully conform to this code; and

(iii) Having written proof of the existence of the use shall be the responsibility of the occupant or property owner.

(3) Agricultural Animals (see Definitions).

(i) The CSR, R-R, R-E, R-1 and R-2 districts shall not have more than one large agricultural animal per one-quarter acre of land and shall be subject to the fencing requirements of this chapter. In these districts, all types of fowl (e.g., chickens, turkeys, ducks, and geese) shall be allowed, subject to the confinement provisions of this subsection.

(ii) In all other districts, a maximum of one large agricultural animal (e.g., horse, sheep, cow, mule or burro) shall be allowed per one-half acre of land.

(iii) Agricultural animals shall be subject to the following provisions:

(A) All large agricultural animals kept on a parcel shall be fenced so that they are no closer than 100 feet from any residential structure on another property. For the purposes of this section, the first in time shall be the first in right. Written permission, if the animal were not first in time, for a lesser distance may be obtained from the property owner, or if not owner occupied, from the occupant.

(B) No person shall keep, house, or shelter one or more pig in any zone district other than R-R unless such person has obtained a conditional use permit in accordance with the provisions of GJMC [21.02.110](#).

(C) Small animals (e.g., chickens and rabbits), which are kept outside the residence, shall be confined by a fence, cage, or pen so as to be no closer than 20 feet from a principal residential structure on an adjoining property. A maximum of six adult animals shall be allowed on parcels of one-half an acre or less. On parcels greater than one-half an acre, 15 adult animals shall be allowed per acre.

(D) In the R-R district, the number of agricultural animals and small animals allowed under this subsection may be exceeded with a conditional use permit (see GJMC [21.02.110](#)). If the conditional use application is approved, the permit shall state the maximum number of animals allowed by type and in the aggregate.

CITY OF GRAND JUNCTION, COLORADO

ORDINANCE NO.

**AN ORDINANCE REZONING 2.749 ACRES
FROM R-R (RESIDENTIAL RURAL)
TO R-1 (RESIDENTIAL 1 DU/AC)**

**LOCATED AT 2607 AND 2609 KELLEY DRIVE
(KELLEY DRIVE REZONE)**

Recitals:

The requested rezone includes two (2) parcels, located at 2607 and 2609 Kelley Drive. Both parcels were created in 1956 as Lot 3 and Lot 4, respectively, of the Replat of Sunny Knoll Subdivision.

Both parcels were annexed in 2000 as part of the G Road North Enclave and were zoned RSF-R, now known as R-R (Residential Rural), at the time of annexation.

The R-R (Residential Rural) zone establishes a minimum lot size of five (5) acres and a minimum side and rear yard setback of 50 feet. This restricts the building envelope to essentially the center of each lot. The request to rezone to R-1 (Residential 1 du/ac) would allow the construction of accessory structure(s) closer to the corner(s) of the lot(s) rather than in the center of the lot. The rezone will also resolve an existing nonconformity in that the minimum lot size will be one (1) acre; the properties are 1.298 and 1.459 acres, respectively.

After public notice and public hearing as required by the Grand Junction Zoning and Development Code, the Grand Junction Planning Commission recommended approval of rezoning the property from R-R (Residential Rural) to the R-1 (Residential 1 du/ac) zone district for the following reasons:

The zone district meets the recommended land use category as shown on the future land use map of the Comprehensive Plan, Residential Medium, and the Comprehensive Plan's goals and policies and/or is generally compatible with appropriate land uses located in the surrounding area.

After the public notice and public hearing before the Grand Junction City Council, City Council finds that the R-1 (Residential 1 du/ac) zone district to be established.

The Planning Commission and City Council find that the R-1 (Residential 1 du/ac) zoning is in conformance with the stated criteria of Section 21.02.140 of the Grand Junction Municipal Code.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION THAT:

The following property shall be rezoned R-1 (Residential 1 du/ac):

Lot 3, SUNNY KNOLL SUBDIVISION, according to the replat thereof and beginning at the Southeast Corner of Lot 3, Sunny Knoll Subdivision, a found No.4 Rebar from whence the Southeast Corner NW 1/4 NW 1/4 Section 35, Township 1 North, Range 1 West of the Ute Meridian bears South 79°41 '08" East 682.74 feet; thence South 28°23'06" East 135.54 feet to the South Line of said NW 1/4 NW 1/4, Section 35; thence along said South line North 89°43' West 170.10 feet; thence North 36.64 feet to the Southwest Comer of Lot 3, Sunny Knoll Subdivision; thence North 52°16' East 133.6 feet to the Southeast Comer of said Lot 3 and the Point of Beginning, County of Mesa, State of Colorado.

AND

LOT 4 of REPLAT OF SUNNY KNOLL SUBDIVISION, according to the official plat thereof recorded June 7, 1959 in Plat Book No. 9 at Page 8 at Reception No. 670182, County of Mesa, State of Colorado.

INTRODUCED on first reading the 19th day of March, 2014 and ordered published in pamphlet form.

ADOPTED on second reading the _____ day of _____, 2014 and order published in pamphlet form.

ATTEST:

City Clerk

Mayor



Attach 8

CITY COUNCIL AGENDA ITEM

Date: March 7, 2014
 Author: Kathy Portner
 Title/ Phone Ext: Econ Dev & Sustainability, ext. 1420
 Proposed Schedule: Apr. 2, 2014
 2nd Reading
 (if applicable): N/A
 File # (if applicable): N/A

Subject: Community Solar Garden Subscription Agreement
Action Requested/Recommendation: Ratify the Final Community Solar Garden Subscription Agreement
Presenter(s) Name & Title: Kathy Portner, Economic Development and Sustainability John Shaver, City Attorney

Executive Summary:

Ratify the final agreement with Fresh Air Energy VIII, LLC (Ecoplexus, Inc.) for the City to be a subscriber to the Pear Park Community Solar Garden “Solar Garden” or “CSG”.

Background, Analysis and Options:

In September of 2013 the City Council authorized Resolution 6212 directing the City staff to negotiate with Ecoplexus Inc. for solar electricity generation. The Resolution provided that the City would be a “subscriber” and allow Ecoplexus to access the solar panels once constructed from and across City property. Terms of the Subscription Agreement were presented at a City Council workshop on January 13, 2014 and Council directed that the City Manager proceed with the agreement. Mesa County and School District 51 also intend to subscribe to the solar energy production. The solar panels will be located on District 51 property.

On March 3, 2014 the School District 51 Board approved a resolution authorizing the Superintendent to enter into a Subscription Agreement and finalize the site license agreement for the use of the School District property for construction and operation of the Solar Garden.

As a subscriber to the Solar Garden, the City can maximize savings by selecting utility accounts. Under the proposed subscription agreement the City will utilize approximately 23% of the 2 MW project. Since the last report to City Council, staff has identified its utility accounts which will maximize the solar rewards credits “SRC” to the City. The identified City accounts will produce a projected first year annual savings of \$90,000.00 which is more than double what had originally been anticipated.

The proposed agreement allows the City to select and change accounts on an annual basis to maximize return. The agreement includes an annual “true-up” provision so that the City would never pay more for the solar power generated than we receive in credits from Xcel. Although the subscription agreement will be for a twenty year period, it is subject to annual appropriation as required by the TABOR amendment. At the end of the twenty year term up to five additional one year periods are allowed.

How this item relates to the Comprehensive Plan Goals and Policies:

Goal 11: Public facilities and services for our citizens will be a priority in planning for growth.

The proposed CSG will generate over \$3.5 million in electricity cost savings for taxpayer funded entities over the 20 year period.

GJ CORE: This project also furthers the goals of GJ CORE (Conserving Our Resources Efficiently) to promote and monitor waste reduction, energy conservation, water conservation, alternative transportation, and pollution reduction and prevention in all City operations.

Board or Committee Recommendation:

There has been no board or committee review; however, the City Council has previously, favorably considered the Solar Garden project.

Financial Impact/Budget:

Savings to the City are conservatively estimated at \$1.9 million over the twenty year period.

Legal issues:

All documents pertaining to the lease agreement and subscriber agreement have been reviewed and approved by the City Attorney.

Other issues:

Ecoplexus has formed a new limited liability company, Fresh Air Energy VIII, L.L.C. to construct and own the Solar Garden and serve as the subscriber organization for the Solar Garden as provided by Colorado law. The Subscription Agreement will be with Fresh Air Energy VIII, L.L.C.

Previously presented or discussed:

- This proposed project was initially discussed at the December 12, 2012 City Council workshop and general direction was given to continue negotiating the terms of the project.

- A non-binding letter of intent to lease City property and subscribe to the solar garden was executed March 15, 2013.
- The project was again discussed at the September 16, 2013 City Council workshop and Resolution No. 62-13 was adopted on September 18, 2013 authorizing the City Manager to enter into negotiations with Ecoplexus, Inc. as a subscriber to the Pear Park Community Solar Garden and authorized a lease for the use of a portion of city-owned property.
- Initial terms of the negotiated Subscription Agreement with Ecoplexus, Inc. were presented at a City Council workshop on January 13, 2014 and Council directed that the City Manager proceed with the agreement.
- Final terms are presented on April 2, 2014.

Attachments:

Community Solar Garden Subscription Agreement
Estimated Savings from Community Solar Garden Subscription

**Fresh Air Energy VIII, LLC
COMMUNITY SOLAR GARDEN SUBSCRIPTION AGREEMENT
SUBSCRIBER: CITY OF GRAND JUNCTION, COLORADO**

TABLE OF CONTENTS

1. PARTIES	1
2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY	2
3. RECITALS	2
4. DEFINITIONS	2
5. CONDITIONS PRECEDENT.....	6
6. SUBSCRIBER'S SUBSCRIPTION.....	7
7. TERM.....	7
8. STATEMENT OF WORK	7
9. RIGHTS TO RENEWABLE ENERGY CREDITS	11
10. SUBSCRIBER PAYMENTS	11
11. BILLING/PAYMENT PROCEDURE	13
12. SUBSCRIPTION RESTRICTIONS.....	14
13. LENDER RIGHTS	15
14. FUNDING FOR THIS AGREEMENT.....	15
15. REPRESENTATIONS AND WARRANTIES; COVENANTS	17
16. DEFAULT	18
17. TERMINATION	18
18. REMEDIES	19
19. REPRESENTATIVES AND NOTICES	19
20. RIGHTS IN DATA, DOCUMENTS AND COMPUTER SOFTWARE.....	19
21. GENERAL PROVISIONS	20
22. SPECIAL PROVISIONS.....	22
23. SIGNATURES	24
EXHIBIT A – SUBSCRIBER SUBSCRIPTION FEE AND MINIMUM ENERGY PRODUCTION SCHEDULES	
EXHIBIT B – SUBSCRIBER DESIGNATION OF SUBSCRIBED METERS AND METER ALLOCATIONS	
EXHIBIT C – SUBSCRIBER AGENCY AGREEMENT	
EXHIBIT D – OPTION LETTER FORM	
EXHIBIT E – INSURANCE REQUIREMENTS	
EXHIBIT F – SITE LICENSE	
EXHIBIT G – LIST OF XCEL AGREEMENTS	
EXHIBIT H – SITE DEVELOPMENT PLAN	

1. PARTIES

THIS COMMUNITY SOLAR GARDEN SUBSCRIPTION AGREEMENT (“Agreement”), dated April 3, 2014 by and between CITY OF GRAND JUNCTION, a Colorado home rule municipal corporation (the “Subscriber”) in Xcel Energy Service Territory in Mesa County, Colorado and FRESH AIR ENERGY VIII, LLC, a Colorado Limited Liability Company, located at 650 Townsend Street, Suite 310,

San Francisco, CA 94103 ("Subscription Organization", "SO", or "Contractor"), each referred to as a "Party" to this Agreement and, collectively, as the "Parties".

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall be effective and enforceable only as of the date it is executed and signed by such person or persons fully authorized to execute this Agreement on behalf of the Subscriber (hereinafter the "Effective Date"). The Subscriber shall not be liable to pay or reimburse SO for any performance hereunder including, but not limited to, costs or expenses incurred, or to be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement. Consideration for this Agreement includes, but is not limited to, the benefits accruing to SO from Xcel under the Xcel Offer; the payments to SO from Subscriber; Xcel Billing Credits accruing to Subscriber; and, the other benefits enjoyed by the Parties under this Agreement.

B. Purpose

- i. SO desires to design, construct, own, operate and maintain a community solar garden on property owned by Mesa County Valley School District No. 51 pursuant to the Site License, to produce electrical power from such garden for sale to Xcel Energy, Inc., ("Xcel") pursuant to the Xcel Offer, and to perform the obligations of a subscriber organization for such garden pursuant to the Act and to access the community solar garden across property owned by the City of Grand Junction pursuant to a separate lease; and,
- ii. Subscriber requires electric service well into the foreseeable future at its schools and facilities located within Xcel service territory, including those designated in Exhibit B hereto, and desires to obtain a subscription interest in the CSG as provided in the Act and as further described herein as a means to achieve potential reductions in the cost of electrical service at its facilities, subject to the terms and conditions of this Agreement.

C. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or attachments, are references to sections, subsections, exhibits or attachments contained herein or incorporated as a part hereof, unless otherwise noted or implied by its use in context.

4. DEFINITIONS

Terms used in this Agreement shall be as defined in the Agreement or as follows, unless the context otherwise expressly requires a different construction and interpretation.

- A. "Act" shall refer to the Colorado Community Solar Garden Act, section 40-2-127, C.R.S, as the same shall be amended from time to time.
- B. "Affiliate" shall refer to, as to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including with its collective meanings, "controlled by" and "under control with") shall refer to possession,

directly or indirectly, of power to direct or cause direction of management or policies (whether among ownership of securities or membership or other ownership interests, by contract or otherwise).

- C. **"Agreement"** shall mean this document, with all its included contents, terms and conditions, including any attached exhibits and other documents incorporated by reference herein, together with any amendments hereto that have been properly executed and approved by the Parties pursuant to **Section 21(J)** below.
- D. **"Annual Total Subscription Fees"** shall mean the total of all scheduled monthly Subscription Fees to be paid in any given Fiscal Year, which for purposes of **Section 10.C.** shall mean having Invoice Due Dates within that Fiscal Year, such that when the calculation required by **Section 10.C.** is performed, the periods to be compared to determine any Annual Shortage shall be the same periods.
- E. **"Annual Shortage"** shall mean the difference between the Annual Total Subscription Fees and the annual payments made to SO as described in **Section 10.C.iii.** of this Agreement.
- F. **"Appropriation"** shall mean for purposes of this Agreement an action of the Legislative Authority of a Political Subdivision by which funds are lawfully made available for use or expenditure by the Political Subdivision.
- G. **"Appropriated Funds"** shall mean funds made available by Appropriation.
- H. **"Available Annual True-up Amount"** shall mean, for purposes of the **Section 10** true-up calculation, such positive portion of the Xcel Billing Credit Annual Total Net available to pay SO at the end of any Fiscal Year to reduce Annual Shortage, if any.
- I. **"Colorado Public Utilities Commission"** or **"COPUC"** shall mean, for purposes of this Agreement, that regulatory body designated by Colorado law to establish rules, regulations and policies to implement, regulate and control the CSG and subscriptions therein.
- J. **"Commercial Operation"** shall mean the condition existing when (a) SO has met all Conditions Precedent specified in **Section 5** of this Agreement; and (b) the CSG is completed and operating as required by Xcel and is delivering Energy to Xcel's service grid under an approved and executed interconnection agreement between Xcel and SO, after SO has satisfactorily completed any requisite testing and certifications associated with or required by such interconnection agreement.
- K. **"Commercial Operation Date"** shall mean the date on which Contractor achieves Commercial Operation.
- L. **"Community solar garden"** shall have the meaning defined by statute at C.R.S. § 40-2-127(2)(b)(I)(A) and when capitalized, **"Community Solar Garden"** or **"CSG"** shall mean the community solar garden financed, designed, constructed, owned, operated, and maintained by SO for the purposes of satisfying SO obligations under this Agreement.
- M. **"Development Period"** shall mean that period beginning on the Effective Date and ending August 31, 2014, unless further extended as provided in **Section 5** of this Agreement.
- N. **"Effective Date"** is the date that this Agreement is signed both by a person having lawful authority to execute the Agreement on behalf of the Subscriber, and by an officer of SO having lawful authority to execute the Agreement on behalf of SO.

- O. **“Energy”** shall refer to the electrical power and energy generated by the CSG, from an eligible solar renewable energy resource as defined in C.R.S. § 40-2-124(1)(a)(IV) C.R.S., as further described in **Section 8. E.**
- P. **“Event of Non-Appropriation”** shall mean a failure of Subscriber to receive direct or indirect funding by Appropriation to pay for utility service at, or Subscription Fees related to, any subscribed retail customer location, or a failure to receive or make available revenues sufficient to pay for utility services for or with respect to any subscribed retail customer location or the subsequent rescission of such funding.
- Q. **“Event of Suspension”** shall mean an election made by SO, in writing, to suspend the obligations of the Parties following an Event of Non-Appropriation as further described in **Section 14 C.**
- R. **“Extension Period”** shall mean a one (1) year period extending the Initial Term and any other one (1) year extensions thereafter.
- S. **“Fiscal Year”** shall mean, for any given Subscriber, the twelve (12) month period for which Appropriations or revenue allocations are made available to the Subscriber.
- T. **“Initial Term”** is that period of time beginning on the Commercial Operations Date and ending on the twentieth (20th) anniversary of such date.
- U. **“Invoice Receipt Date”** shall mean the date of receipt by Subscriber of a correct, accurate, and complete billing as qualified in **Section 11**, except in the case described in **Section 11.E.**, where the term shall have the meaning described in such section.
- V. **“kWh”** shall mean kilowatt hours, and **“kWh-AC”** shall mean kilowatt hours of alternating current..
- W. **“Legislative Authority”** shall mean the governing board, council, or legislative authority of a Subscriber, if Subscriber is a Political Subdivision or other governmental entity. As used herein, the term is used to define that governing board, council, or person(s) having lawful authority to commit funds or approve budgets for expenditures.
- X. **“Lender”** shall mean any financial institution with which SO has agreements for the financing of all or part of the CSG or SO’s obligations under this Agreement, including financing for construction of the CSG.
- Y. **“MW”** shall mean megawatts; **“MW-DC”** shall mean megawatts of direct current.
- Z. **“Option Letter”** shall mean a document in form substantially similar to **Exhibit D** that may be unilaterally executed by a Subscriber to reallocate the percentage of CSG production subscribed by Subscriber among then subscribed meters or to add or delete meter locations to or from the Subscription. Option Letters may only change the meter locations and meter allocations designated in **Exhibit B**, Subscriber’s Designation of Subscribed Meters and Meter Allocations.
- AA. **“Person”** shall refer to any individual, corporation, partnership, limited liability company, joint venture, association, trust, estate, unincorporated organization or other business entity.
- BB. **“Political Subdivision”** shall mean any Colorado governmental entity or subdivision of the State of Colorado other than an agency, department, division or office of the State, or an institution of higher education where the effectiveness of contracts is subject to approval by the Controller of the State of

Colorado, and shall include without limitation any town, city, county, school district or special district in Colorado.

CC. "Qualified Subscriber" shall mean a public institution of education, agency, department, division, office or institution of any City in Mesa County, Mesa County, and any agency of the State of Colorado or a Political Subdivision.

DD. "Renewable energy credit" or "REC," for purposes of this Agreement, means the contractual right to i. the full set of non-energy attributes, including any and all international, federal, state or local credits, governmental or commercial benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the specific amount of Energy generated from the Community Solar Garden, but not including Xcel Billing Credits, and, ii. any use of such non-energy attributes for purposes of demonstrating compliance with the renewable energy standard under state of Colorado statute and rule.

EE. "Site License" shall mean that certain Site License Agreement dated as of August 7, 2013 between Ecoplexus, Inc. and Mesa County Valley School District No. 51, a copy of which is attached hereto as **Exhibit F**.

FF. "Subscriber" shall mean a retail customer of a qualifying retail utility who owns or has beneficial use of Energy generated by the CSG with a claim to a subscription and who has identified one or more physical locations to which the subscription shall be attributed. The term as used herein shall have the full meaning defined in C.R.S. § 40-2-127(2)(b)(II) and used in C.R.S. § 40-2-127(2)(b)(I)(A). A subscriber may include a State of Colorado executive state agency, a public institution of higher education or a Political Subdivision. When capitalized, the term "Subscriber" herein shall mean the subscriber identified in **Section 1**.

GG. "Subscription" shall mean a proportional interest expressed as a specific percentage in the Energy output of any solar electric generation facilities installed at a community solar garden, but not including Renewal Energy Credits. The term as used herein shall have the full meaning defined in §40-2-127(2)(b)(III) C.R.S. When capitalized, the term "Subscription" herein shall mean the Subscriber's subscription in the CSG.

HH. "Subscription Agency Agreement" shall mean the agreement between SO and the Subscriber required by Xcel for participation in the Xcel Offer. A copy of the form of the Subscription Agency Agreement is included as **Exhibit C**.

II. "Subscription Fees" shall mean the amount to be paid monthly to SO for the Subscriber's Subscription. Subscription Fees shall be assessed at the rates per kWh-AC delivered to Xcel in any given year of Commercial Operation as scheduled in **Exhibit A**.

JJ. "Subscription Services" shall refer to those services and other duties and responsibilities of SO as described herein.

KK. "Xcel Agreement(s)" shall refer to the Xcel Offer agreements, including any required interconnection agreement between SO and Xcel, the Solar Rewards Community Agreement, the Subscription Agency Agreement(s) and any other documents and forms which are required by Xcel in connection with the Xcel Offer or for Subscriber to receive Xcel Billing Credits commensurate with its Subscription as provided by applicable law or regulation and as contemplated by this Agreement. A list of the Xcel Agreements is attached as **Exhibit G**. To the extent such other Xcel agreements are not available or have not been

executed at the time of execution of this Agreement, the Parties agree that the other Xcel Agreements, when executed, shall be included in this definition by reference.

LL. "Xcel Billing Credits" (also known as "Solar Rewards Community Service Subscriber Credits") shall mean the monthly credits received from Xcel by Subscriber on Subscriber's retail customer electrical bill, for any Subscription location, for the Energy delivered to Xcel by the CSG and attributed to the Subscriber's Subscription.

MM. "Xcel Billing Credit Annual Total" shall mean the aggregate of all Xcel Billing Credits received by a Subscriber in its Fiscal Year totaled for purposes of the true-up calculation described in **Section 10**.

NN. "Xcel Offer" shall refer to the Xcel Solar*Rewards Community offer and shall refer to the renewable solar energy program set up by Xcel in order to meet state of Colorado statute and COPUC Rule 4 CCR 723-3 requirements, as such may be modified from time to time by future statutes or rules of the COPUC, and to comply with the then current Xcel Renewable Energy Standard Compliance Plan.

OO. "Xcel Service Territory" shall refer to that service area in which Xcel is permitted by the COPUC to provide electrical power for sale to customers.

5. CONDITIONS PRECEDENT

This Agreement and Subscriber's payment obligations under this Agreement shall be subject to full satisfaction of the following Conditions Precedent on or before expiration of the Development Period:

- A.** Subscription Organization shall obtain and assume, by assignment with the prior written consent of Mesa County Valley School District No. 51, all of the rights and obligations of Ecoplexus, Inc. under the Site License, and shall provide Subscriber with a copy of the executed instruments evidencing such assignment and consent.
- B.** SO shall construct the CSG with a nameplate capacity of no less than 1.97 MW-DC on the site described in the Site License in accordance with the Site Development Plan and Conditional Use Permit issued by the City of Grand Junction and dated June 25, 2013 (such permit and plan are attached hereto as **Exhibit H**). The CSG shall have a designed initial output of no less than 3.5 kWh-AC in the first full year of Commercial Operation, but in no case shall the nameplate production thereof exceed the limits permitted by or described in the Xcel Offer.
- C.** Subscription Organization verifying and confirming, in writing, (i) Subscriber's qualification as a subscriber pursuant to State statute and COPUC rule; (ii) Subscriber subscribed meter locations all qualify for this Subscription; and (iii) acceptance by Xcel as such.
- D.** Approval by Xcel of the CSG for Commercial Operation within the time required by Xcel or within any extensions granted by Xcel, and provision to Subscriber of evidence of Xcel approval to Subscriber. Receipt of an executed copy of the Subscription Agency Agreement and acceptance in writing by Xcel, either in letter form, email, or via its on-line system for subscriber set-up of meters, shall be sufficient evidence of such approval.
- E.** Subscription Organization providing to Subscriber a legal opinion, written by an attorney licensed in the state of Colorado or another state (provided such attorney is qualified in the subject matter as it relates to community solar gardens or similar projects involving shared interests in the output of solar electric generation facilities as such is authorized under state of Colorado statute and COPUC rule) that subscription interests in Energy produced at the CSG are not securities subject to regulation by state or federal authorities.

The Subscriber shall have no payment obligations to SO until all Conditions Precedent have been satisfied, or waived in writing by the person identified to receive notice in **Section 19** after a showing satisfactory to Subscriber in its sole discretion that SO has diligently attempted to satisfy a Condition Precedent but cannot fully do so. Prior to satisfaction of all Conditions Precedent, SO shall provide Subscriber monthly updated schedules showing actual and planned completion of all efforts necessary to achieve satisfaction of the Conditions Precedent. If SO is or will be unable to achieve satisfaction of the Conditions Precedent on or before expiration of the Development Period despite diligent efforts on its part, SO may extend the Development Period up to one hundred eighty (180) days with Subscriber's prior written consent, which consent shall not be unreasonably withheld in the event the SO's failure to achieve satisfaction of the Conditions Precedent on or before expiration of the Development Period is due to causes beyond SO's reasonable control. Subscriber acceptance of any Condition Precedent shall represent only Subscriber's acknowledgment that a condition to this Agreement has, to the best of Subscriber's knowledge and belief, been satisfied.

6. SUBSCRIBER'S SUBSCRIPTION

Subject to the terms and conditions of this Agreement, upon satisfaction of the Conditions Precedent set forth in **Section 5** above, Subscriber shall have a subscription to twenty-three percent 23% of the production capacity and output of the CSG; the benefit of Xcel Billing Credits relating to twenty-three percent 23% of the Energy provided to Xcel from the CSG, as identified in **Exhibit A** hereto.

7. TERM

This Agreement shall be in full force and effect on the Effective Date and shall continue initially until the Commercial Operations Date. If the Commercial Operations Date does not occur on or before expiration of the Development Period, or such extensions thereof as provided in **Section 5** above, this Agreement will terminate and be of no further force or effect. Upon the Commercial Operations Date, the term of this Agreement shall be extended automatically for the Initial Term, unless earlier terminated as provided in this Agreement. Subscriber may, by written notice by Subscriber to SO given at least thirty (30) days prior to the expiration of the Initial Term or any Extension Period, elect to extend such term or period for up to five (5) successive Extension Periods. Except as otherwise provided in a written amendment signed by Subscriber and SO, the terms and conditions of this Agreement shall apply and govern each Extension Period.

8. STATEMENT OF WORK

SO shall have the following obligations under this Agreement:

- A. During the Initial Term and any Extension Period, SO shall provide Energy from the CSG pursuant to Subscriber's Subscription as provided in this Agreement.
- B. SO shall perform the functions of a subscriber organization with respect to the CSG and provide all services required of a subscriber organization by the Act, COPUC rules and regulations, the requirements of the Xcel Offer and as otherwise required by this Agreement.
- C. SO shall make any and all certifications and reports required by Xcel, and shall abide by the terms and conditions set forth in the Xcel Offer; perform any and all obligations, promises, agreements and covenants not expressly reserved to Subscriber by the Xcel Offer or this Agreement, and indemnify Subscriber for SO's failure to do so. Xcel shall be solely and uniquely responsible for complying with the requirements of the Xcel Offer as shall be necessitated by this Agreement, law, and/or COPUC rule. Subscriber shall make reasonable efforts to assist SO in meeting its reporting obligations under the Xcel Offer or applicable COPUC rules and regulations, so long as such assistance does not result in additional expense to Subscriber, subject Subscriber to obligations under any collateral agreement, or require Subscriber to act in a manner contrary to law or in the best interest of Subscriber.

D. Site License. SO shall faithfully perform and comply with each and every condition, term and/or requirement that the Licensee is obligated to perform or comply with pursuant to the Site License, the terms of which are incorporated by this reference as if fully set forth herein. SO shall indemnify, save, and hold harmless Subscriber, its directors, officials, officers, employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by said Licensee or its employees, agents, subcontractors, or assignees in exercising rights or performing obligations under the Site License. This subparagraph shall not be construed or interpreted as a waiver, express or implied, by Subscriber of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-201, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*, as applicable, as now or hereafter amended.

E. Energy Provided to Xcel. During the Initial Term and any Extension Period, SO shall provide Energy generated by the CSG, measured in kWh-AC, to Xcel, for which Xcel is required to credit Subscriber's retail customer electrical billing for a given Subscription location pursuant to the then current COPUC approved Xcel Billing Credits. SO shall provide Xcel required documentation (which may be in the form of electronic information) so that Subscriber is credited with Subscriber's Subscription allocation at each subscribed meter location. SO and Subscriber entered, or shall enter, into the Xcel approved Subscription Agency Agreement required by Xcel to allow for such Xcel Billing Credits to be provided to Subscriber. The Subscription Agency Agreement is attached hereto and incorporated herein as part of Exhibit C, or shall be if not yet executed at the time this Agreement is executed. The Parties agree that the minimum Energy provided to Xcel each year from the CSG will be no less than that scheduled in Exhibit A. SO guarantees to Subscriber no annual minimum Xcel Billing Credit dollar amount will be provided to Subscriber by Xcel; however, in the event CSG production is less than the minimum amounts specified in Exhibit A, any reductions in Subscriber's retained Xcel Billing Credits that would result from such shortfall in production shall be offset by an equivalent reduction in the Subscription Fee billing. Any required reduction in Subscription Fee payment for this adjustment shall take place during the true-up described in Section 10 below. The basis and calculations for such adjustment shall be provided to Subscriber with Subscriber's final Fiscal Year monthly billing and shall be subject to audit by Subscriber.

F. Subscription Services

SO shall provide such Subscription Services as may be required by law, COPUC rules or the Xcel Offer related to fulfilling required obligations to all subscribers, including the production, delivery and metering of Energy, and as otherwise required under this Agreement. Subscription Services shall also include, but shall not be limited to, the following: auditing of utility billing and Xcel Billing Credit accounting to the extent permitted or required by Xcel and this Agreement, management of all other requirements of Xcel including customer qualification, fulfilling minimum subscription requirements for income-qualified subscribers, and minimum reporting as required under this Agreement. With notice to and the consent of the Subscriber, SO may subcontract with other Persons to perform its administrative and management obligations for Subscription Services, such as marketing, billing, customer management, utility process and data management, accounting, subscriber acquisition and replacement, provided that SO shall remain liable to Subscriber for all obligations under this Agreement. SO shall perform its Subscription Services with the due care, skill, and diligence provided by persons experienced in the performance of similar services. Without limitation to the foregoing, SO shall:

- i. Make reasonable efforts to promote interest in the benefits of a subscription to potential Political Subdivisions and other agencies and departments of the State with a goal of maintaining an active roster of potential Qualified Subscribers to ensure compliance with Xcel Offer requirements, COPUC rules, and this Agreement.

- ii. Enter into agreements with other Qualified Subscribers or, if a Qualified Subscriber is not available, other subscribers, using a form substantially similar to this Agreement with terms that are identical to those described herein when possible, except that SO may enter agreements with income-qualified subscribers on terms that vary from those of this Agreement (subject to any other express requirements stated elsewhere in this Agreement for agreements with income-qualified subscribers).
- iii. Maintain lists of potential income-qualified subscribers or entities with income-qualified meters or subscribers sufficient to reasonably assure that the CSG complies with all COPUC rules requiring minimum levels of CSG subscription participation by income-qualified subscribers.
- iv. Provide that all subscription agreements entered into with any subscriber, other than an agency, department or public institution of higher education or a Political Subdivision of the state of Colorado, shall include a provision by which said subscriber shall indemnify Mesa County Valley School District No. 51 and the City of Grand Junction and their elected officials, employees, officers, employees, and agents, against any and all claims, damages, liability and court awards, including costs, expenses and attorneys' fees incurred, as a result of any negligent act or omission or breach of the subscription agreement by such subscriber, its employees, agents and assigns arising out of or in any way connected with the Site License, the access lease or such subscriber's subscription.
- v. On request, provide Subscriber with copies of all records provided by SO to Xcel or from Xcel to SO, or alternatively, provide a means for electronic access to such information. In addition, promptly following execution of each Xcel Agreement, SO shall provide to Subscriber with a complete and legible copy of such fully executed Xcel Agreement in paper or electronic form.
- vi. Provide billing and payment training and instruction to Subscriber as well as ongoing assistance to Subscriber regarding explanations of SO and Xcel billing and billing error corrections.
- vii. Provide, upon request of Subscriber, copies of all written operation and maintenance procedures for the CSG detailing emergency procedures and evidence of and outcomes of periodic inspections to verify proper operation of all CSG systems (including contact information for persons assigned to perform such tasks), and ensure such procedures are implemented. To the extent SO subcontracts with qualified subcontractors to perform such procedures, SO shall ensure that any such subcontractor carries policies of insurance fully in compliance with the requirements of **Exhibit E**, and shall, upon Subscriber request, provide a copy of such subcontract and evidence of required insurance.
- viii. Upon request of Subscriber and subject to any applicable law, provide to Subscriber electronic copies of all subscriber subscription agreements and Xcel Agreements entered into by the SO relating to the CSG and, to the extent not readily available through Xcel, make available for review all records and data generated by SO in performing Subscription Services for any and all subscribers, which may be in electronic or online format.
- ix. Provide Subscriber such information as Subscriber may reasonably require, describing at a minimum the name and business activities, if any, of any proposed subscriber that is not a Qualified Subscriber for Subscriber approval, which approval shall not be unreasonably denied or delayed, or made subject to unreasonable conditions.
- x. Exercise diligent efforts at all times to keep the CSG fully subscribed, with at least five percent (5%) of the CSG capacity subscribed to income-qualified subscribers. If at any time the CSG

becomes less than fully subscribed, or income-qualified subscriber participation in the CSG drops below the five percent (5%) minimum requirement, SO shall promptly inform Subscriber, and upon request, advise how and when SO intends to correct the deficiency in subscription level.

- xi. Exercise best efforts to assist Subscriber in optimizing Subscriber's Xcel Billing Credits without having any specific allocated CSG subscription percentage, expressed as kWh-AC over any 12-month period, exceed the location's kWh-AC per year limit set by COPUC rule and the Xcel Offer. Such efforts shall include, but not necessarily be limited to, the following:
 - a. Monitor all subscribed retail customer locations of Subscriber to assess whether subscription allocations need adjustment to assure subscription allocations will approximate actual usage based on historic usage, trending indicated by current billings, and Subscriber provided information as to changes in operations at or use of a given subscribed retail customer location.
 - b. Recommend reallocation among the subscribed allocations on a meter-by-meter basis for each subscribed retail customer location if appropriate.
 - c. Recommend Subscriber retail customer meter location substitutions that may result in increasing Subscriber's Xcel Billing Credits.
 - d. Pending Subscriber acceptance of SO's recommended reallocations and substitutions, draft changes to **Exhibit B** for Subscriber to include in an Option Letter that would authorize any meter and allocations changes approved by Subscriber; and coordinate the changes with Xcel so that the required changes to Xcel Billing Credits occur.

Monitoring efforts shall be performed monthly, with SO recommendations submitted to Subscriber with Subscription Fee billings as often as necessary to allow Subscriber time to review, comment, verify and confirm, accept such recommendations, and effect an Option Letter. At a minimum, recommendations shall be provided in the tenth (10th) month of the Subscriber's Fiscal Year; again when Xcel Billing Credits changes are known; any time Subscriber provides the information identified in **Section 8.F.xi.a.**; and at any time SO is given notice of an Event of Non-Appropriation.

G. Maintenance and Operation of CSG

SO or its employees or subcontractors shall perform, or cause to be performed, all operations, repair, maintenance, and monitoring services required or appropriate for the CSG during the Initial Term of this Agreement and any Extension Periods thereto, as well as any and all SO responsibilities required to assure Subscriber of receiving all monthly Xcel Billing Credits associated with the Energy delivered to Xcel due to Subscriber's Subscription interests.

H. Insurance

SO shall, at its sole expense, maintain in full force and effect at all times during the Development Period, Initial Term and any Extension Period policies of insurance providing the coverages, conditions and limits set forth in **Exhibit E**. All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies authorized to conduct business in the State of Colorado. Evidence of insurance, required endorsements and renewals thereof shall be provided to Subscriber in accordance with **Section 19**. Insurance coverage required herein or in the Site License shall be primary over any insurance or self-insurance program carried or maintained by Subscriber that might otherwise apply. In the event of a conflict between any insurance requirement stated in **Exhibit E** and those set forth in the Site License, the more stringent or comprehensive requirement shall apply.

I. Reporting.

- i. In addition to reporting otherwise required by Xcel or the rules of the COPUC, and to the extent reporting required by Xcel or the rules of the COPUC does not require such reporting, SO shall provide at the time of Subscriber's billing in the last month of the Subscriber's Fiscal Year, an annual written report showing the performance of the CSG under this Agreement. This report shall be provided in the form of an MS Excel spreadsheet that shall show all Energy production, by month (or partial month, if there is a subscriber subscription change during any month) for each Fiscal Year following the Commercial Operation Date, and all subscriber's subscriptions reported to Xcel, and for each subscribers' subscribed meter location, it shall show both kWh-AC and the percentage of the CSG total Energy production such usage represents.
- ii. The preparation of reports required by Xcel or by this Agreement, in a reasonably timely manner or as specifically prescribed, is a material requirement of this Agreement and an uncured failure to report may be deemed a default. Whether or not declared a default, Subscriber shall not be obligated to make payment for the last month of any Fiscal Year, nor payment to reduce any Annual Shortage, until and unless the requirements of **Section 11.E.** are satisfied, which requirements included provision of an accurate annual report. All reporting to Xcel shall be available for Subscriber to review.

9. RIGHTS TO RENEWABLE ENERGY CREDITS

Except to the extent otherwise expressly provided herein, Subscriber acknowledges and agrees that its Subscription pursuant to this Agreement does not include any entitlement to claim the use or benefit of the RECs associated with the Energy generated by the CSG for the Initial Term of this Agreement and any Extension Period thereof. All RECs shall be available to SO for the Initial Term and any Extension Period thereof and may be used by SO in a manner consistent with the Xcel Offer requirements. To the extent the RECs associated with the Energy generated by the CSG may be viewed to accrue to Subscriber by Xcel or otherwise, Subscriber hereby assigns such rights to SO during the Initial Term and any Extension Period.

10. SUBSCRIBER PAYMENTS

From Appropriated Funds or revenue allocations otherwise made available to pay for electrical service at a Subscription location, not used for such due to monthly Xcel Billing Credits resulting from Subscriber's Subscription interest in the CSG and this Agreement, Subscriber shall pay SO, as follows:

- A. Subscriber shall pay monthly Subscription Fees as scheduled in **Exhibit A**, which indicates the Subscription Fee per kWh-AC produced by the CSG and attributed to the Subscriber's Subscription, and are due and payable, on a monthly basis, to the extent that SO's billing indicates Xcel will provide Xcel Billing Credits equal to or greater than the scheduled Subscription Fee for the billed month and the SO has submitted a correct billing, as otherwise qualified below.
- B. Payment in any given month, except the last month of the Subscriber's Fiscal Year which shall be governed by **Section 10.C.**, shall not exceed the total aggregated Xcel Billing Credit received for such month by Subscriber for Subscriber's meters designated on **Exhibit B**.
- C. If, and only if, the total payments made in a given Fiscal Year are less than the Annual Total Subscription Fees for the same period after any adjustment in the Annual Total Subscription Fees required per **Section 8.E.** is made (the "Adjusted Annual Total Subscription Fees"), the following will occur:
 - i. The actual yearly to date and then current month Xcel Billing Credits received by Subscriber for all meters subscribed by Subscriber will be totaled, which shall be the Xcel Billing Credit Annual Total;

- ii. Second, the monthly Subscription Fees actually paid or due to be paid by Subscriber during the Fiscal Year (including the then current month) shall be totaled and subtracted from the Xcel Billing Credit Annual Total, which shall be the Xcel Billing Credit Annual Total Net; and, then,
- iii. If and to the extent there is a positive amount in the Xcel Billing Credit Annual Total Net, which shall be the Available Annual True-Up Amount, Subscriber shall pay SO in addition to the scheduled Subscription Fee for the final month of the Subscriber's Fiscal Year, as much of the Available Annual True-Up Amount as necessary to reduce to zero (or to as low an amount as possible with the Available Annual True-Up Amount) any shortage between the Adjusted Annual Total Subscription Fees less annual actual payments made plus the Subscription Fee for the final month of the Subscriber's Fiscal Year, which shall be the Annual Shortage.
- iv. Notwithstanding the foregoing, in calculating the Available Annual True Up Amount, Subscriber shall not be required to pay any Subscription Fees for kWh-AC production resulting from the Subscriber's Subscription for which Xcel did not provide Subscriber a corresponding Xcel Billing Credit.

D. At the end of the Initial Term, if no Extension Period has been agreed upon, and Subscriber's Fiscal Year end is not coincidental with such, the look-back and true-up, if any, described in **Section 10.C.** shall be similarly applied to this partial year, i.e., the period between the end of the Subscriber's Fiscal Year and the end of the Initial Term. If an Extension Period has been agreed upon, the procedure described in **Section 10.C.** shall continue uninterrupted until the end of the Extension Period, except that at the end of the Extension Period, if no further Extension Period has been agreed upon and the Subscriber's Fiscal Year is not coincidental with such, the look-back and true-up, if any, described in **Section 10.C.** shall be similarly applied to the partial year, i.e., the period between the end of the Subscriber's Fiscal Year and the termination of the Agreement.

E. During any Extension Period, the Subscription Fee rate to be used to calculate the total monthly Subscription Fee due to SO from Subscriber shall be as indicated on **Exhibit A.**

F. Subscriber's Rights to Xcel Billing Credits

Any portion of Xcel Billing Credits not required to be paid to SO in accordance with **Exhibit A** and **Section 10.C.** shall be retained by Subscriber.

G. Limitation on Subscriber's Duty to Pay SO

Except to the extent required to be paid annually by Subscriber Fiscal Year in accordance with **Section 10.C.**, Subscriber shall have no obligation at any time to pay to SO any monthly Subscription Fee amount in excess of an amount equal to the monthly Xcel Billing Credit received by Subscriber from Xcel for Subscriber meter locations designated by the Subscriber, as identified on SO's invoice. In aggregate, annually in any Fiscal Year, Subscriber shall have no obligation to pay SO more than the Subscriber has received annually in such Fiscal Year in total Xcel Billing Credits for all Subscriber meter locations identified by the Subscriber for its Subscription to the CSG. Subscribed locations at the time of entering into this Agreement and the percentage of Subscription allocated to each meter at subscribed locations are indicated in **Exhibit B** which may be modified by Subscriber from time to time.

H. Subscriber Not Responsible For Costs and Expenses

Subscriber shall not be liable to SO for payment for costs or expenses incurred by SO pursuant to this Agreement. Payment pursuant to this Agreement will be made exclusively from avoided costs received by Subscriber as Xcel Billing Credits in any given Fiscal Year, and only to the extent of aggregate Xcel Billing Credits received by Subscriber in such Fiscal Year. Only upon receipt of the Xcel Billing Credits

shall Subscriber have any obligation to pay any amounts to SO. The maximum annual Subscription Fee paid to SO by the Subscriber shall be the amounts credited by Xcel to Subscriber pursuant to the Subscriber Subscription under this Agreement, at the rates scheduled in Exhibit A for kWh-AC delivered and accepted by Xcel for the benefit of Subscriber. Subscriber shall owe no other amounts or compensation of any kind or nature. No direct or indirect SO fees, costs, expenses, or taxes, incurred by SO under, or arising from this Agreement shall be payable by or the responsibility of Subscriber.

- I. During any Extension Period, the Subscription Fee rate to be used to calculate the total monthly Subscription Fee due to SO from Subscriber shall be as indicated on Exhibit A.

11. BILLING/PAYMENT PROCEDURE

- A. SO shall establish monthly billing procedures for the CSG and provide invoices or statements to Subscribers for payments due under this Agreement. Such will include documentation reasonably requested by Subscriber, to include at a minimum the kWh-AC supplied by SO to Xcel for each of Subscriber's subscribed meter locations. Subscriber shall be required to make payments pursuant to this Agreement only from funds available due to Xcel Billing Credits associated with its Subscription. Incorrect payments by Subscriber to SO, due to billing or payment errors or omissions, fraud, or defalcation may be recovered from SO by any means legally available to Subscriber, or alternatively, Subscriber may deduct the amount of such incorrect payments from subsequent payments of assigned amounts due under this Agreement or other contracts between Subscriber and SO.
- B. Unless Subscriber provides notice to SO of an alternate electronic means acceptable to it for receiving invoices or making payments (which notice shall specify multiple recipients), monthly invoices and monthly payments shall be mailed using the U.S. Postal Service or other delivery service, postage or delivery charges pre-paid, to the following:

Subscriber: City of Grand Junction
Address: 250 N. 5th Street
Grand Junction, CO 81501
Attention: Budget and Accounting

- C. Subscriber shall make payment in full with respect to uncontested billing for Subscription Fees within thirty (30) days of receipt of the Invoice Due Date, except in the last month of Subscriber's Fiscal Year when Subscriber shall make payment in full with respect to an uncontested billing for Subscription Fees and any true-up amount within sixty (60) days of the Invoice Due Date. Uncontested invoice amounts not paid by Subscriber within thirty (30) days or sixty (60) days, as applicable, shall bear interest on the unpaid balance beginning with the thirty- first (31st) day after payment is due at a rate of one percent (1%) per month until paid in full; provided, however, that no interest shall accrue with respect to unpaid amounts for which Subscriber has delivered to SO notice of a good faith dispute. SO shall invoice Subscriber separately for accrued interest on delinquent amounts owed. The billing shall reference the delinquent payment, the number of day's interest to be paid, and the applicable interest rate. If Subscriber contests any amount on an invoice or reasonably determines that SO has failed to provide adequate documentation to support any amount on an invoice, Subscriber shall promptly give SO notice of such dispute or describe the documentation necessary to review the amount claimed within twenty-five (25) days of receipt of the invoice.
- D. If payment has not been made within thirty (30) days of the billing date of an uncontested billing, SO shall provide Subscriber with an additional written notice. If payment has not been received within an additional thirty (30) days after giving such notice, SO may, to the extent permitted by the Xcel agreements with the SO or the terms of the Xcel Offer, permanently or temporarily cease allocating

Energy to Subscriber for its Subscription and advise Xcel that the Subscription amount is unsubscribed, or SO may, at its option, terminate this Agreement (subject to the requirements of **Section 17.A.**) and transfer the Subscription to another Qualified Subscriber (or another subscriber regardless whether a Qualified Subscriber to the extent a Qualified Subscriber cannot be located and such subscriber is acceptable to other subscribers) or advise Xcel the Subscription is unsubscribed pending such a transfer.

- E. The Invoice Due Date for the last month of the Subscriber's Fiscal Year shall be the date an accurate billing is received together with (i) a correct and accurate adjustment per **Section 8.E.**; (ii) a correct, complete, and accurate annual report as required in **Section 8.I.i.**; and (iii) a correct, complete, and accurate true-up analysis as required pursuant to **Section 10.C.**

12. SUBSCRIPTION RESTRICTIONS

- A. SO agrees that, with the exception of five percent (5%) of the total subscriptions required by the terms of the Xcel Offer, the Xcel Agreements, or by law to be provided to income-qualified subscribers, all other subscriptions at the CSG shall only be provided to and held by Qualified Subscribers where such other Qualified Subscribers are available and willing to subscribe in the CSG. Subscriptions shall be offered to any replacement Qualified Subscriber with Subscription Fees identical with Subscription Fee rates scheduled in **Exhibit A** and as provided in **Section 10**, for any given year of Commercial Operation. SO may offer subscriptions to other subscribers at commercially viable and agreed terms when, but only when, Qualified Subscribers are unavailable or unwilling to subscribe in the CSG. SO further agrees that it shall include in all subscription agreements it enters into with respect to the CSG, regardless of whether the subscriber is or is not a Qualified Subscriber, a requirement that no subscription may be sold, assigned or transferred for any reason; and, except with respect to transfers and assignments permitted under **Section 21.C.** between Qualified Subscribers where such replacement Qualified Subscribers are approved by SO and which approval shall not be unreasonably denied, subscriptions may only be transferred back to SO for reallocation.
- B. Each Qualified Subscriber shall have a right of first refusal to subscribe to all or any portion of a subscription that is transferred back to SO or that is otherwise available for reallocation to a Qualified Subscriber, but no Qualified Subscriber may exercise such right to cause its subscription in the CSG to exceed the maximum permitted by law. SO shall give written notice to each Qualified Subscriber if and when a subscription interest is available for reallocation, whereupon Qualified Subscribers shall have thirty (30) days from the date such notice is received to exercise such right of first refusal by written notice to SO. In the event more than one Qualified Subscriber exercises its right of first refusal with respect to the same subscription offered for reallocation, such interest shall be allocated among the Qualified Subscribers exercising their first refusal rights in equal shares if feasible, unless said Qualified Subscribers agree in writing to some other allocation.
- C. The designation of meters at specific retail customer locations as described in **Exhibit B** may, however, be changed by a Subscriber by Option Letter as more specifically described in **Section 8.F.xi.** to allow for the change of or at a specific meter location, or for other business reasons, provided Subscriber substitutes a comparable replacement meter location, as described in **Section 8.F.xi.** Comparable replacements shall provide for equivalent or better kWh-AC usage at tariffs producing equivalent or better Xcel Billing Credits. A comparable replacement may also be achieved by reallocation of the percentage of kWh-AC subscribed at a meter location, provided the net result provides equivalent or better ability to pay Subscription Fees in aggregate than those provided in the Subscription before a change of a retail customer location.
- D. Subscribers shall not advertise nor market subscriptions for sale or assignment, and all subscription agreements entered into by SO shall provide that subscriptions shall not be advertised for sale or assignment by any subscriber. All rights in subscriptions are personal to the subscriber, and except as

expressly otherwise provided herein, shall revert to SO upon abandonment, sale, or a transfer or assignment not approved by the SO and consistent with the terms of this Agreement. Except in the case of an Event of Non-Appropriation under Section 14, and with respect to permitted meter substitutions, any such abandonment, or attempt at sale or transfer, shall not alter Subscriber's obligations to pay scheduled Subscription Fees as herein conditioned.

13. LENDER RIGHTS

- A.** Subscriber acknowledges that SO may finance the acquisition, development, installation, operation or maintenance of the CSG, and that any financial institution, as lender to SO for the financing of the CSG, may require SO to secure its obligations by a pledge or collateral assignment of this Agreement. Subscriber agrees to cooperate, at the request of Lender, and take any action not inconsistent with this Agreement reasonably requested by Lender to perfect its interests in this Agreement.
- B.** Subscriber agrees to deliver duplicates or copies of all notices of default delivered by Subscriber under or pursuant to this Agreement to Lender simultaneously with delivery thereof to the SO under the Agreement, so long as Lender has provided to Subscriber and SO, evidence of Lender's interest in the CSG and current Lender notice information.
- C.** In the event that a Lender chooses to exercise the rights and remedies of SO under this Agreement, Lender shall pay all sums due to Subscriber under this Agreement and perform any other act, duty or obligation required of SO under this Agreement (including without limitation the obligations of SO as Licensee under the Site License) or cause to be cured any default of SO hereunder in the time and manner provided by the terms of this Agreement, provided, however, that nothing herein shall require Lender to cure any default of SO under this Agreement (unless Lender has succeeded to SO's interests under this Agreement or otherwise elected to exercise the rights and remedies of SO) or to perform any act, duty or obligation of SO under this Agreement.
- D.** Prior to the exercise of remedies under any agreements or instruments creating Lender's security interest in the CSG, including any sale of the CSG by Lender, whether by judicial proceeding or under any power of sale contained therein, or by any conveyance from SO to Lender, Lender shall give thirty (30) days' advance written notice to Subscriber.
- E.** In the event a Lender elects to exercise the rights and remedies of SO or its remedies under any agreement or instruments creating the Lender's security interest in the CSG, it shall do so using a Qualified Assignee, except where the obligations of SO are financial in nature and of the type typically undertaken by financial institutions. "Qualified Assignee" shall mean a proposed or actual assignee or transferee of SO's rights and obligations under this Agreement pursuant to a transfer by any means including by judicial proceeding or power of sale under any agreements or instruments creating Lender's security interest, in connection with which SO, or its successor, has provided to subscribers reasonable proof that such proposed or actual assignee or transferee: (a) has comparable ability, personnel and successful experience to that of SO in operating and maintaining photovoltaic systems comparable to the CSG; (b) has the financial and logistical capability to maintain, repair, operate and remove (or finance, design, construct, operate and maintain if prior to the Commercial Operations Date), the CSG in accordance with the requirements of this Agreement and the Site License; (c) has provided a performance bond as required by the Site License; and (d) shall assume in writing all of SO's obligations under this Agreement, the Site License and under any other then current subscription agreements applicable to the CSG, including any accrued obligations at the time of the assignment or transfer.

14. FUNDING FOR THIS AGREEMENT

- A.** While this Agreement will extend beyond the current state fiscal year or the funding year of a Political Subdivision, the Parties understand and agree that any obligation on the part of Subscriber to pay SO in

any given future fiscal or funding year constitutes a then-current year expense of Subscriber, payable exclusively from Subscriber's then-current annual appropriation or allocation. Payment agreed to under this Agreement is contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall not in any way be construed to be a general obligation indebtedness of the Subscriber within the meaning of any provision of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the Subscriber. The act of appropriation for Subscriber's payment obligations under this Agreement is an act solely within the discretion of the Subscriber's Legislative Authority, and such discretion may be exercised individually with respect to each subscribed retail customer location identified in **Exhibit B** to this Agreement (or as such may be later modified by Option Letter). No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of moneys of the Subscriber. Neither Subscriber, nor SO on its behalf, has pledged the full faith and credit of the Subscriber or its Legislative Authority, and this Agreement shall not directly or contingently obligate Subscriber or its Legislative Authority to apply funds, or levy or pledge any form of taxation, to the payment of any amounts payable by Subscriber beyond those appropriated and allocated, or otherwise made available, in the then-current Fiscal Year.

- B.** Subscriber represents that it currently includes in its annual budget an amount estimated to be sufficient, if appropriated, to pay for utilities, including electrical service at prevailing electrical rates for all subscribed retail customer locations identified in **Exhibit B** to this Agreement (or as such may be later modified by Option Letter), and intends to continue to do so during the Initial Term and any Extension Period, subject to annual appropriation as set forth in **Section 14.A.** above. Subscriber shall promptly notify SO in writing if for any reason sufficient funds will not be available for a given Fiscal Year during the Initial Term for any subscribed retail customer location.
- C.** In the event, however, in any given Fiscal Year, an Appropriation or revenue allocation is not made to fund the utilities at any subscribed retail customer location or such Appropriation or revenue allocation is reversed or rescinded at any retail customer location subscribed herein, the Parties' obligations with respect to any retail customer location subject to such Event of Non-Appropriation may be terminated upon written notice to SO by the Subscriber. Alternatively, at the election of SO, obligations with respect to that portion of the Agreement subject to an Event of Non-Appropriation may be suspended upon notice until such time as the Subscriber's Legislative Authority appropriates, allocates revenue, or otherwise makes available funds to pay amounts due hereunder (such notice constituting an Event of Suspension), or until SO gives notice to rescind such suspension, in which case the termination shall be effective. If an Appropriation or other revenue allocation is made, Subscriber shall give notice to SO and any suspension shall be rescinded. In either event, Subscriber shall not be obligated to make any remaining payments due with respect to such retail customer location after its then-current Fiscal Year.
- D.** Following an Event of Non-Appropriation, if Subscriber terminates this Agreement in whole or in part, SO agrees to act diligently to replace the Subscriber's Subscription or the terminated portion of such Subscription with another Qualified Subscriber in the Xcel Service Territory in Mesa County meeting all requirements of law, COPUC rules and the Xcel Offer. Subscriber may alternatively terminate this Agreement in whole or amend the Agreement in part with respect to one or more retail customer locations, and transfer, by assignment, its terminated obligations and benefits under this Agreement to another Qualified Subscriber pursuant to **Section 12 and 21.C.** In doing so, Subscriber shall give notice to SO of its proposed assignment of all or a portion of this Agreement and Subscriber's proposed replacement Qualified Subscriber, providing SO with sufficient information to allow SO to determine the replacement Qualified Subscriber can meet Xcel requirements for identification and contracting purposes. The proposed assignment of this Agreement to a replacement Qualified Subscriber by Subscriber must be effected with the same formality indicated by this Agreement, but shall not be unreasonably delayed, conditioned or denied by SO. During any period that Subscriber is unable to

meet its obligation to pay SO, SO shall have the right, without terminating this Agreement, to use any benefit of the Subscriber's Subscription to generate income, and, to the extent permitted by the rules of Xcel or the COPUC, to continue to deliver Energy associated with Subscriber's Subscription to Xcel as if it is fully subscribed, or as unsubscribed interests. Any Event of Non-Appropriation shall result in the Subscriber's Fiscal Year being deemed ended with respect to the retail customer location affected for purposes of Section 10 payments.

15. REPRESENTATIONS AND WARRANTIES; COVENANTS

- A. SO represents and warrants that it has received an RFP award from Xcel, and has or will have sufficient qualified personnel, funding, and expertise to design, construct, finance, operate and maintain the CSG, or in and perform its obligations as a subscriber organization in accordance with the Xcel Offer, this Agreement and applicable laws and regulations.
- B. SO represents and warrants that it has obtained or will promptly acquire all necessary governmental approvals or permits necessary for the construction and operation of the CSG on the property specified in the Site License, that the CSG will be built in accordance with the plans and specifications submitted to governmental agencies or authorities in connection with the issuance of such approvals and permits, and that SO will at all times comply with the terms and conditions of the Conditional Use Permit and incorporated site development plan attached as Exhibit H, as well as any and all applicable federal, state and local land use or environmental laws or regulations. SO further represents and warrants that the Energy produced at and by the CSG shall only be sold to Xcel during the term of this agreement and that, in exchange for doing so, Subscriber and other subscribers will receive Xcel Billing Credits and Energy shall be used for no other purposes (other than maintenance and operation of the CSG).
- C. SO represents and, to the extent permitted by law, warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind SO to its terms.
- D. Subscriber represents and, to the extent permitted by law, warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind Subscriber to its terms.
- E. SO represents and warrants that neither it, nor any Affiliate, will sell subscriptions except to required income-qualified subscribers, and will not in any circumstance sell or create securities or shares in the CSG, or permit any other Person to resell Subscriptions, in whole or part. SO represents and warrants that except for permitted transfers between Qualified Subscribers, subscriptions may only be transferred from a subscriber to SO, and all of its subscription agreements for the CSG shall so limit transfers. SO agrees not to knowingly take any action that would cause any subscription or any other interest of a subscriber to be deemed a security under or subject to the Securities Act of 1933 or any other state or federal securities laws, without regard to whether registration would be required or the subscription or any other interest of a subscriber would qualify for an exemption from registration under said act or any applicable state or federal securities laws. SO represents and warrants that it has no knowledge of, or other reason to believe, that a Subscription in the CSG will be, or is likely to be, deemed a security. SO covenants that it will promptly inform Subscriber during the Term of this Agreement in the event it has any basis to believe that Subscriber's Subscription or any interest of a subscriber in the CSG will be, or has been, deemed, a security under or subject to the Securities Act of 1933 or any other state or federal securities laws. SO agrees that in the event any Subscription at the CSG is deemed or alleged in any civil action to be a security, Subscriber shall have the right, but not the obligation, to terminate this Agreement, and SO shall indemnify and hold harmless Subscriber from any and all claims, liabilities or losses so

arising and shall at Subscriber's request provide a defense for Subscriber by counsel of Subscriber's choosing at SO's expense.

- F. SO represents and warrants that it is familiar with and capable of performing and/or satisfying all of the requirements of Xcel related to the CSG and that it shall at all times comply with the terms and conditions set forth in Xcel's requirements, the Xcel Offer or its rules and regulations; perform and be solely responsible for any and all obligations to Xcel; and indemnify Subscriber, to the extent permitted by law, from and against any claim, loss, demand, liability, injury arising from, or other consequences of, SO's failure to do the same.
- G. SO represents and warrants that during the term of this agreement, Energy produced at and by the CSG shall be used for no other purposes other than maintenance and operation of the CSG or as may otherwise be permitted by the Xcel Offer, the COPUC rules and this Agreement, and further that the Energy shall be sold and delivered only to Xcel, its successor or any permitted assignee directed by Xcel.
- H. SO represents and warrants that it shall exercise best efforts to ensure that the CSG stays at all times fully subscribed by Qualified Subscribers to the greatest extent permitted by the Xcel Offer rules and the rules of the COPUC; provided, however, that SO may reasonably over-subscribe income-qualified subscribers or provide subscriptions to income-qualified subscribers at more advantageous terms to the extent reasonably necessary to maintain the required minimum level of such subscriptions at five percent (5%). SO further represents and warrants that it will not provide CSG subscriptions to Persons other than Qualified Subscribers except where, after an Event of Non-Appropriation, neither Subscriber nor SO has successfully transferred obligations under this Agreement to another Qualified Subscriber pursuant to Sections 12. and 13.D. With the exception of proposed subscriptions with income-qualified subscribers, with respect to which Subscriber may not unreasonably withhold consent, Subscriber may otherwise withhold consent in its reasonable discretion so long as Subscriber is not in default under this Agreement.
- I. Subscriber represents and warrants that it requires electric service at its schools and facilities, located within Xcel service territory, including those designated in Exhibit B hereto, that such requirement will continue for the foreseeable future, and that such foreseeable need is and, to the best of its knowledge, will remain at or in excess of twenty-three percent 23% of the electrical power and energy capable of being generated by the proposed Community Solar Garden.

16. DEFAULT

- A. A Party shall be in default under this Agreement upon (i) a failure to perform or comply with any of the terms and conditions of this Agreement, including breach of any covenant contained herein, unless such failure is corrected or cured within thirty (30) days after written notice to such Party demanding that such failure to perform or comply be cured (unless a different period is expressly provided by this Agreement with respect to such failure), or within such longer period as is reasonably necessary under the circumstances provided that curative or corrective action has commenced within such thirty (30) day period and is being diligently pursued to completion without interruption or unreasonable delay; (ii) any representation or warranty furnished by such Party in this Agreement is false or misleading in any material respect when made; or (v) any uncured default by such Party under any Xcel Agreement required for the other Party to perform its obligations under this Agreement or to receive Xcel Billing Credits under this Agreement. In addition, SO shall be in default upon the occurrence of any event of default by SO under the Site License.

17. TERMINATION

This Agreement may be terminated by either Party in the event SO, for any reason, shall fail to obtain or loses its right to operate the CSG, including but not limited to termination of its right to use or access the property where the CSG is located.

A. Subscription Organization shall have the right, but not the obligation, to terminate this Agreement by written notice to Subscriber if Subscriber shall be in default under this Agreement, including without limitation in the event of non-payment after notice as provided in Section 11.D. In the event of termination by SO, SO shall have the right to unilaterally transfer Subscriber's Subscription or that portion so terminated to another Qualified Subscriber in the Xcel Service Territory, or to another subscriber if no Qualified Subscriber is available and willing to enter a subscription agreement, subject to the restrictions in Section 12 above.

B. Subscriber shall have the right, but not the obligation, to terminate this Agreement by written notice to SO if SO shall be in default under this Agreement, or under any Xcel Agreement where such default results in termination of an Xcel Agreement, or pursuant to Sections 7, 14.D. and 15.E.

18. REMEDIES

In addition to any other remedies provided for in this Agreement, Subscriber and SO shall be entitled to all remedies available at law or in equity, except to the extent expressly limited herein. The Parties hereto agree to exhaust any administrative remedies required by applicable statute, ordinance, rule (including without limitation such administrative remedies and procedures as exist for Political Subdivisions) or policy, prior to commencing any actions at law. Nothing herein shall prevent either Party hereto from seeking injunctive relief at any time.

19. REPRESENTATIVES AND NOTICES

The individuals identified below are the designated representatives of the Parties. All notices required to be given to a Party pursuant to this Agreement shall be hand delivered with receipt required or sent by certified or registered mail, signature of receipt required, to the representative at the address for such named Party set forth below. Either Party or the Lender may, from time to time, designate by written notice substitute addresses or persons to whom such notices shall be sent. Other communications or as an additional means of communicating a formal notice, may be sent using e-mail, with a confirmation of receipt and read functions activated in the transmission.

For the Subscriber:

Name: Jay Valentine
Internal Service Manager
City of Grand Junction

Address: 250 N. 5th Street
Grand Junction, CO 81501

With copy(i)es to:

Name: John P. Shaver, Esq.
Address: 250 N. 5th Street
Grand Junction, CO 81501

For Subscription Organization:

Name: Erik Stuebe
President
Fresh Air Energy VIII, LLC

Address: 650 Townsend Street, Suite 310
San Francisco CA 94103
Office: (415) 626-1802

20. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work of any type, including drafts, prepared by SO in the performance of its obligations under this Agreement shall be with the Subscriber upon request, but Subscriber shall confine any copying or other use to review and analysis purposes, implementation or enforcement of this Agreement and/or assessment of SO performance..

21. GENERAL PROVISIONS

- A. Compliance with Applicable Law.** Each Party, their contractors and subcontractors, assigns and Affiliates, if any, shall at all times during the term of this Agreement strictly adhere to, and comply with, all applicable Federal and State of Colorado laws, and their implementing rules and regulations, as they currently exist and may hereafter be amended.
- B. Taxes.** Qualified Subscriber's tax exempt status does not extend to the activities of SO, and SO shall not rely on any Subscriber tax exempt status to relieve SO from taxes due for its activities, purchases or sales under this Agreement.
- C. Assignment and Successors.**
- i. With the exception of collateral transfers or contingent assignments to Lenders, Subscription Organization shall not transfer, assign, or subcontract, its rights and obligations under this Agreement other than to an Affiliate of SO, without the prior, written consent of Subscriber, which consent shall not be unreasonably withheld with respect to a Qualified Assignee as defined in Section 13.E., provided however, that any such assignee or transferee shall have assumed all of the obligations of the SO under this Agreement, including without limitation, its indemnity and insurance obligations.
 - ii. Subscriber shall not transfer, assign, or subcontract, its rights and obligations under this Agreement other than to one or more other Qualified Subscribers without the prior, written consent of SO, which consent shall not be unreasonably withheld. Subscriber shall have both the right to transfer or assign this Agreement in whole or in part to a Qualified Subscriber and the obligation to attempt to transfer or assign this Agreement in whole or in part to a Qualified Subscriber, following an Event of Non-Appropriation. Following assignment or transfer of this Agreement by Subscriber to one or more Qualified Subscribers, or any other subscriber approved by SO in exercise of its reasonable discretion, or following a good faith attempt at such assignment or transfer following an Event of Non-Appropriation, Subscriber shall be relieved of and discharged from all obligations hereunder, or if such assignment or transfer is not of Subscriber's complete Subscription, to the extent of the portion assigned or transferred or for which a good faith attempt to transfer was undertaken.
- D. Limitation of Liability.** Other than the indemnification obligations and liability provisions provided elsewhere in this Agreement, including without limitation, obligations and liability for personal injury, death, and property damage addressed, but not limited by required insurances, and except as otherwise expressly provided to the contrary herein, neither Party is liable to the other for any consequential, incidental, indirect or special damages, including commercial loss, however caused and regardless of legal theory or predictability, which directly or indirectly arises under this Agreement.
- E. Indemnification.** SO shall indemnify, defend, and hold harmless Subscriber, its Legislative Authority, elected officials, employees, agents, successors and assigns, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by SO, or its employees, agents, contractors, subcontractors, or assignees pursuant to the terms of this Agreement, or as a result of any breach of any covenant or warranty herein, or the termination of this Agreement for reasons other than nonperformance under this Agreement. To the extent permitted by law, SO's duty to indemnify, defend and hold harmless shall extend to all claims, liabilities and losses incurred by any indemnified party arising from the acts or omissions or breach of contract by any other former or current subscriber to the CSG or any Person with whom SO contracts for access to or use of the CSG site. Notwithstanding the foregoing, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the

immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-201, et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671, et seq., as applicable, as now or hereafter amended.

- F. Venue.** SO agrees it shall submit voluntarily to the jurisdiction of the Federal and State of Colorado courts in the State of Colorado, and that this Agreement shall be subject to and interpreted under the laws of the State of Colorado, and the court venue shall be the District Court in and for Mesa County, Colorado.
- G. Entire Understanding.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the Parties.
- H. Severability.** Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.
- I. Survival of Certain Agreement Terms.** Notwithstanding anything herein to the contrary, all terms and conditions of this Agreement which may require continued performance, compliance, or effect beyond the expiration or earlier termination of this Agreement, shall survive such expiration or termination, whether or not such survival is expressly provided for herein, and shall be enforceable by a Party in the event of the other Party's failure to perform or comply as required.
- J. Modification and Amendment.** This Agreement is subject to such modifications as may be required by changes in Federal or State of Colorado law, or their implementing regulations, including without limitation rules adopted by the COPUC. Except as specifically provided in this Agreement, no modification of this Agreement shall be effective unless agreed to in writing by the Parties in an amendment to this Agreement, properly executed and approved in accordance with Colorado law.
- K. Binding Effect.** Except as otherwise provided in this Agreement, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.
- L. Captions.** The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.
- M. Counterparts.** This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.
- N. Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.
- O. P. Waiver.** Waiver of any breach under a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

22. COLORADO SPECIAL PROVISIONS

The Agreement shall include the following Special Provisions. Any reference to the "Contractor" in such provisions shall refer to the SO. In the event of conflicts or inconsistencies between this Agreement and the following Special Provisions, the Special Provisions shall control:

- A. **Governmental Immunity.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671, *et seq.*, as applicable now or hereafter amended.
- B. **Independent Contractor.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State of Colorado. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State of Colorado and the State of Colorado shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State of Colorado to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State of Colorado, and (iii) be solely responsible for its acts and those of its employees and agents.
- C. **Compliance With Law.** Contractor shall strictly comply with all applicable Federal and State of Colorado laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
- D. **Choice Of Law.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- E. **Software Piracy Prohibition.** No public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of Federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the Subscriber determines that Contractor is in violation of this provision, the Subscriber may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with Federal copyright laws or applicable licensing restrictions.
- F. **Employee Financial Interest.** The signatories represent and warrant that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

G. Public Contracts For Services. Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to C.R.S. §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State of Colorado agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State of Colorado agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101, *et seq.*, the contracting State of Colorado agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

[remainder of this page intentionally left blank]

23. SIGNATURES.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Persons signing for SO hereby swear and affirm that they are authorized to act on SO's behalf and acknowledge that the Subscriber is relying on their representations to that effect. **Principal is not a recognized title and will not be accepted.**

SUBSCRIPTION ORGANIZATION:

SUBSCRIBER:

FRESH AIR ENERGY VIII, LLC

CITY OF GRAND JUNCTION

By _____
Erik Stuebe, President

By _____
Rich Englehart, City Manager

Date: _____

Date: _____

**EXHIBIT A
SUBSCRIBER FEE & PRODUCTION SCHEDULE**

	[Column A]	[Column B]	[Column C]	[Column D]	[Column E]	[Column F]
	Subscription Fee (\$/kWh AC) ¹	Projected Total CSG Production (kWh AC)	Minimum Total CSG Production (kWh AC) ²	City's Share of Total CSG Production	City's Projected Subscription Production (kWh AC) :[Column C] times [Column E]	City's Minimum Subscription Production (kWh AC) :[Column D] times [Column E] ³
Year 1 ⁴	\$0.06750	3,571,643	3,083,897	23.00%	821,478	699,256
Year 2	\$0.06851	3,583,785	3,090,717	23.00%	817,371	694,765
Year 3	\$0.06954	3,596,016	3,097,613	23.00%	813,294	691,293
Year 4	\$0.07058	3,618,336	3,100,585	23.00%	809,217	687,835
Year 5	\$0.07164	3,600,744	3,095,632	23.00%	805,171	684,395
Year 6	\$0.07272	3,603,340	3,090,754	23.00%	801,145	680,973
Year 7	\$0.07381	3,605,834	3,085,951	23.00%	797,140	677,569
Year 8	\$0.07491	3,608,435	3,081,221	23.00%	793,154	674,181
Year 9	\$0.07604	3,631,253	3,076,565	23.00%	789,188	670,820
Year 10	\$0.07718	3,614,096	3,071,982	23.00%	785,242	667,486
Year 11	\$0.07834	3,597,026	3,067,472	23.00%	781,316	664,179
Year 12	\$0.07951	3,580,041	3,073,035	23.00%	777,409	660,798
Year 13	\$0.08070	3,563,141	3,058,659	23.00%	773,523	657,454
Year 14	\$0.08191	3,546,325	3,044,376	23.00%	769,658	654,206
Year 15	\$0.08314	3,529,593	3,030,154	23.00%	765,806	650,935
Year 16	\$0.08439	3,512,945	3,016,005	23.00%	761,977	647,643
Year 17	\$0.08566	3,296,380	2,801,523	23.00%	758,168	644,442
Year 18	\$0.08694	3,279,839	2,787,514	23.00%	754,377	641,220
Year 19	\$0.08825	3,263,439	2,773,574	23.00%	750,605	638,014
Year 20	\$0.08957	3,247,182	2,760,104	23.00%	746,852	634,824
Total		68,139,402	57,938,549		15,672,076	13,311,205

Footnotes:

¹ Year 1 begins on Commercial Operation Date; for example, if the Commercial Operation Date is August 1, 2014, Year 1 begins on August 1, 2014 and ends on July 31, 2015.

² Beginning Year 2, Subscription Fee escalates annually at the rate of:

1.50%

³ As referenced in Section B.E. of the Subscription Agreement

Sample Calculation of Annual Total Subscription Fees:

Assuming CSG production is as projected for Year 1, City's Year 1 Annual Total Subscription Fees would be calculated as follows:

Year 1 Subscription Fee rate (\$0.06750/kWh AC) [Column A] times City's share of production (821,478 kWh AC) [Column E] equals \$55,440.75

The foregoing calculation is intended for illustrative purposes only. The City's obligation to pay Subscription Fees is at all times governed by and subject to the provisions of the Subscription Agreement.

EXHIBIT B -- DRAFT
SUBSCRIBER DESIGNATION OF SUBSCRIBED ACCOUNTS

Account Name and Street Address	Xcel Account Number	Xcel Premise Number	KW Subscribed ¹	Percent of District's Subscribed Accounts	Percent of CSG ²
2410 G RD APT BALL	53-1286004-9	300062424	70.84	15.40%	3.54%
546 28 1/4 RD	53-1286004-9	300029603	35.81	7.79%	1.79%
2068 S BROADWAY APT PUMP	53-1286004-9	300084938	19.91	4.33%	1.00%
LINCOLN PK GOLF CRSE 3RD HOLE	53-1286004-9	300066467	38.84	8.44%	1.94%
2057 S BROADWAY	53-1286004-9	300013697	34.51	7.50%	1.73%
2410 G RD	53-1286004-9	300168483	54.18	11.78%	2.71%
2935 ORCHARD AV	53-1286004-9	304004716	35.13	7.64%	1.76%
333 WEST AVE	53-9839620-2	304235086	84.66	18.41%	4.23%
2057 S BROADWAY UNIT PUMP	53-1286004-9	300001221	86.07	18.71%	4.30%
Total			459.95	100.00%	23.00%

Footnotes:

¹ KW Subscribed as Indicated on SRC Subscriber Agency Agreements

² Based on 1,999.8 kW-DC CSG

SRC SUBSCRIBER AGENCY AGREEMENT

FOR XCEL ENERGY SOLAR*REWARDS COMMUNITY SERVICE (COLORADO)

SRC Subscriber Name: _____
SRC Subscriber Retail Customer Account No.: _____
SRC Subscriber Service Address: _____

SRC Subscriber E-mail Address: _____
SRC Subscriber Mailing Address: _____
SRC Subscriber Telephone No: _____ (Primary) _____ (Alt.)
SRC Producer (Subscriber Organization) Name: _____
Solar Garden ID No: _____
Name and Location of Solar Garden: _____

SRC Subscriber's Initial Subscription Share (in kilowatts, or "kW"): _____ kW

The undersigned SRC Subscriber hereby authorizes _____ ("SRC Producer"), and SRC Producer hereby accepts the responsibility, to act as SRC Subscriber's agent for purposes of selling to Public Service Company of Colorado ("Public Service") all of SRC Subscriber's beneficial interest in and to the Photovoltaic Energy and associated Renewable Energy Credits generated by, and delivered to Public Service from, the Photovoltaic Energy System ("PV System") identified above, including full authority for SRC Producer to enter into a long-term contract on behalf of SRC Subscriber for such sale and to administer such contract, all pursuant to Public Service's Solar*Rewards Community Program and Rate Schedule SRC of Public Service's electric tariff on file with the Colorado Public Utilities Commission ("Commission") and in effect from time to time.

1. **Duties of SRC Producer Generally.** SRC Producer shall be responsible for issuing and managing the subscriptions of all SRC subscribers in the PV System and for selling to Public Service the subscribed and unsubscribed portions of the Photovoltaic Energy and associated Renewable Energy Credits generated by the PV System and delivered to Public Service at the production meter located at the PV System site. In performing such functions, SRC Producer shall be solely responsible for communicating directly to Public Service SRC Subscriber's information concerning its subscription in the PV System, including its beneficial interest in the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System. SRC Subscriber acknowledges and agrees that Public Service shall exclusively rely on such information as regularly and timely communicated from the SRC Producer for the purpose of calculating the SRC Credit that will be applied by Public Service and reflected on SRC Subscriber's subsequent electric service bills as compensation for Public Service's receipt of SRC Subscriber's share of the Photovoltaic Energy and associated Renewable Energy Credits generated and produced by the PV System, in accordance with Rate Schedule SRC of Public Service's Colorado Public Utilities Commission electric tariff.

2. **Adjustments of Prior Period SRC Bill Credits.** To the extent the subscription information communicated by SRC Producer to Public Service and used by Public Service for purposes of calculating the SRC Credit applied on SRC Subscriber's electric service bill was incorrect, SRC Producer shall be responsible for processing all corrections or other adjustments of SRC Credits previously applied by Public Service to SRC Subscriber's electric service bills and to collect any overpayments and remit any underpayments for all such SRC Credits, as necessary, among SRC Subscriber and other SRC subscribers owning subscriptions in the PV System. SRC Subscriber acknowledges and agrees that any such corrections in amounts previously applied by Public Service as an SRC Credit on any of SRC Subscriber's electric service bills for prior periods shall be administered exclusively by SRC Producer, and that Public Service shall not be required to increase or reduce any SRC Credit previously applied to SRC Subscriber's electric service bill in any prior period to the extent such corrections are the result of incorrect subscription

**EXHIBIT D
OPTION LETTER**

MESA COUNTY COMMUNITY SOLAR GARDEN OPTION LETTER

1) OPTIONS: *[Choose all applicable options listed and delete the rest, along with this instruction.]*

- a. Change in the allocation percentage(s) for Subscriber's subscribed meters.
- b. Change in meter locations allocated to Subscriber's subscription.
- c. Change in allocation percentage(s) for Subscriber's subscribed meters and change in meter locations allocated to Subscriber's subscription.

2) REQUIRED PROVISIONS:

- a. Subscriber Name hereby elects to make one or more of the changes specified in Paragraph 1 above and as specified in the attached revision to Exhibit B to the original Subscription Agreement.
 - b. The amount of the current Fiscal Year contract value is unchanged. The total amount payable under this Agreement shall not exceed the total Xcel Billing Credits received in the current Fiscal Year for meters allocated to the Subscriber's Subscription.
- 3) Effective Date.** The effective date of this Option Letter is upon approval of the appropriate person or persons with similar approval authority for contracts) or Effective Date, whichever is later.

[The signature block below shall be modified as appropriate in the case of Political Subdivisions]

NAME OF SUBSCRIBER
NAME, TITLE
_____ By: INSERT-Name of Authorized Individual, INSERT-Official Title of Authorized Individual
Date: _____

EXHIBIT E INSURANCE REQUIREMENTS

Commercial General Liability

SO shall maintain Commercial General Liability Insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury with minimum limits as follows: (i) \$4,000,000 each occurrence; (ii) \$4,000,000 general aggregate; (iii) \$2,000,000 products and completed operations aggregate; and (iv) \$100,000 any one fire. If any aggregate limit is reduced below \$4,000,000 because of claims made or paid, Contractor or Subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document satisfactory to the Subscriber showing compliance with this provision.

Personal/Real Property Insurance

SO shall maintain Personal Property insurance covering the CSG, Site Improvements, and all of Contractor's solar panels, hardware, cabling, equipment, trade fixtures, appliances, furniture, furnishings, and other personal property installed, stored or otherwise present from time to time in, on, or upon the premises licensed under the Site License in an amount not less than the full replacement cost without deduction for depreciation.

Workers' Compensation Insurance

SO shall have Workers' Compensation Insurance in accordance with scope and limits as required by the State of Colorado.

Employer's Liability

SO shall maintain Employer's Liability Insurance with minimum limits of \$500,000 per occurrence.

Automobile Liability

SO shall maintain Comprehensive Automobile Liability insurance including "B" extension (uninsured motorists), with minimum limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per accident.

Additional Insured

The Subscriber shall be named as additional insured on all Commercial General Liability policies., including additional insured coverage for completed operations. All such policies shall provide that the additional insured shall not be reason of inclusion as an additional insured incur any liability to the insurance carrier for the payment of any premiums, and shall include clauses stating that evidence of insurance and required endorsements, and renewals thereof, shall be provided to any subscriber named as an additional insured.

Primacy of Coverage

Coverage required of SO shall be primary over any insurance or self-insurance program carried by Subscriber.

Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to SO and Subscriber.

Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by Contractor or its Subcontractors as required herein shall include clauses stating that each carrier waives all rights of recovery, under subrogation or otherwise, against the Subscriber, its officers, agents, employees, and volunteers.

Certificates

SO shall provide certificates showing insurance coverage required hereunder to the Subscriber within seven (7) business days of achieving Commercial Operations. No later than fifteen (15) days prior to the expiration date of any such coverage, SO shall deliver to the Subscriber certificates of insurance evidencing renewals thereof.

**EXHIBIT F
SITE LICENSE**

**SITE LICENSE AGREEMENT
(Mesa County Valley School District No. 51)**

This **SITE LICENSE AGREEMENT** ("Agreement") is made, dated, and effective as of August 7, 2013 (the "Effective Date") by and between the **MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51** ("District"), and **ECOPLEXUS, INC.**, a Delaware corporation ("Licensee"). Each of District and Licensee is sometimes referred to as a "Party" and collectively as the "Parties."

RECITALS

A. District is the owner of certain unimproved real property located in Mesa County, Colorado, as more particularly described on the attached Exhibit A and incorporated herein by this reference (the "Property").

B. Licensee is in the business of developing and operating solar photovoltaic energy facilities and related equipment (each, a "PV System") for the generation of electrical energy.

C. Licensee desires to obtain from District a license to access and use the Property, for the installation, operation, repair, maintenance, and removal, from time to time, of a PV System constituting a Community Solar Garden (as defined in Colorado Revised Statutes (C.R.S.) § 40-2-127(2)(b)(A)) (a "Solar Garden"), as generally depicted on the attached Exhibit B and incorporated herein by this reference.

D. District desires to grant Licensee such a license upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to facilitate the installation, maintenance and operation of the Solar Garden, the Parties agree as follows:

I. **Grant of License; Nature of License.** District hereby grants to Licensee a license to use the Property for the term set forth in Section 2 below, which license shall be subject to and limited by the terms and conditions set forth herein (the "License"). Throughout the Development Period, Term and any Renewal Term (each as defined in Section 2.1), such license shall permit use of the Property solely for the purposes set out in Section 3.2 below and no other purposes, unless otherwise authorized in writing by the District.

1.1. District reserves the right to grant to other persons or entities the right to operate other photovoltaic, solar power plants in or at other locations within the District, and Licensee understands and agrees that its right to operate an electricity grid-connected photovoltaic, solar power plant within District is not exclusive. Further, District reserves to itself, its successors and assigns, the right to grant leases, easements and rights of way over, across, and under the Property after the Effective Date for utilities, cell tower, and other uses, so long as such leases, easements and rights of way do not interfere with Licensee's use right in violation of Section 3.6 herein.

EXHIBIT G
LIST OF XCEL AGREEMENTS

EXHIBIT G
LIST OF XCEL AGREEMENTS WITH SO

1. **Interconnection Agreement**
2. **Solar® Rewards Community Agreement**
3. **SRC Subscriber Agency Agreement (Exhibit C)**

EXHIBIT H
SITE DEVELOPMENT PLAN AND SPECIFICATIONS



RECORD OF DECISION / FINDINGS OF FACT

DATE: July 29, 2013
FILE: CUP-2013-202
LOCATION: 2930 & 2940 D ¼ Road
PETITIONER: Ecoplexus
650 Townsend Street, Suite 310
San Francisco, CA 94103
PROJECT IS: **APPROVED w/ Conditions**

On June 25, 2013, the Grand Junction Planning Commission approved the requested Conditional Use Permit (CUP) for a solar power generation facility (basic utility) on 14.34 acres in an R-8 (Residential 8 du/ac) and CSR (Community Services and Recreation) zone district. The project is located at 2930 and 2940 D ¼ Road, legally described as Lot 1 and Lot 2, respectively, of the Girardi Subdivision.

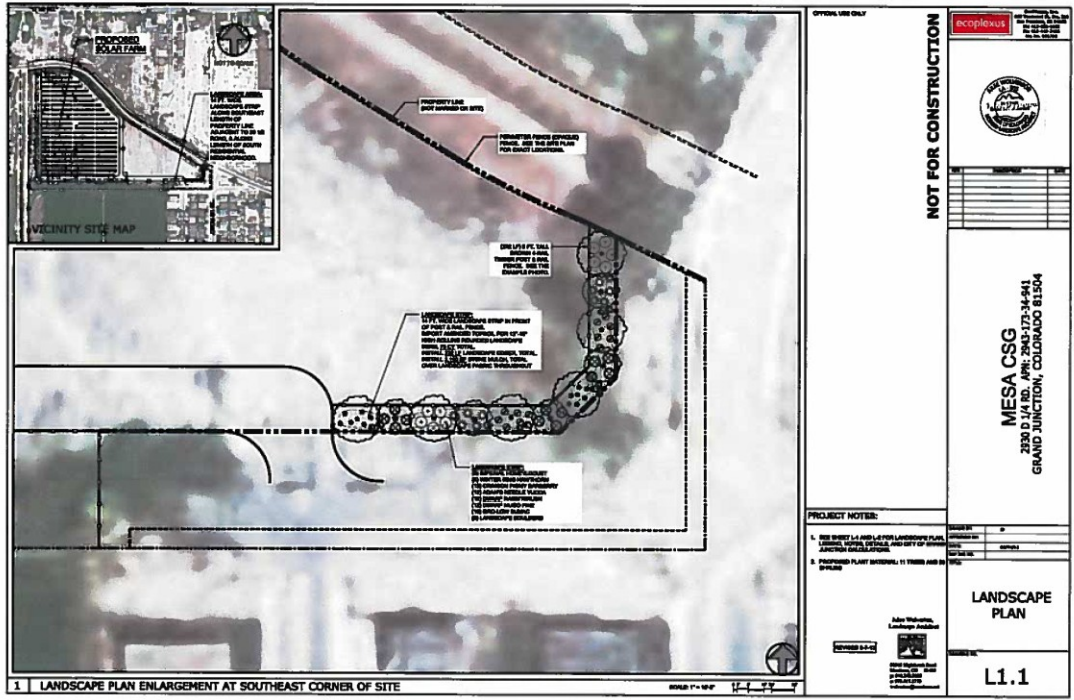
The Planning Commission found that the request was consistent with the goals and policies of the Comprehensive Plan; that review criteria of Section 21.02.110 of the Grand Junction Municipal Code (GJMC) have been met; and finding that submitted signage meets with the sign requirements for a CUP as specified in GJMC Section 21.02.110(d).

The Conditional Use Permit approval is subject to the following conditions:

- Easements for electrical distribution outside of the facility shall be secured and recorded.
- Lot 1 and 2 shall continue to function together as one site for the duration of the use, unless an amendment to the CUP is approved.
- Installation of landscaping as shown on the landscape plan within eighteen (18) months of approval of the CUP and maintenance of that landscaping for the duration of the use.

Once established the conditional use approval runs with the land unless the property changes use or the use is abandoned for a period of 12 consecutive months, pursuant to GJMC Section 21.02.110(g). The applicant must develop or establish such use within one (1) year from the date of approval pursuant to GJMC Section 21.02.080(n)(1)(i). Failure to satisfy any condition of approval shall constitute sufficient basis to revoke this approval, as described in GJMC Section 21.02.110(h)(ii) and (iv).

Brian Rusche, Senior Planner
brusche@cityofgj.org
(970) 256-4058



1. LANDSCAPE PLAN ENLARGEMENT AT SOUTHEAST CORNER OF SITE

OFFICIAL USE ONLY

NOT FOR CONSTRUCTION

scoplexus

PREPARED BY
 CHECKED BY
 APPROVED BY
 DATE

MESA CSG
 2830 D ILLINOIS AVE. SUITE 200
 GRAND JUNCTION, COLORADO 81504

PROJECT NOTES:

- SEE SHEET L1 AND L2 FOR LANDSCAPE PLAN, LEGEND, PLANT SCHEDULE AND CITY OF GRAND JUNCTION SPECIFICATIONS.
- PLANTING PLANT MATERIALS, 11 THINGS AND 10 SPECIES.

John Williams
 Landscape Architect
 1000 1/2
 1000 1/2
 1000 1/2
 1000 1/2

LANDSCAPE PLAN

L1.1

LANDSCAPE NOTES:

1. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

2. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

3. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

4. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

5. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

6. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

7. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

8. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

9. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE FOLLOWING NOTES AND SPECIFICATIONS.

TREE PLANTING SECTION

A
L-2

SHRUB PLANTING SECTION

C
L-2

LANDSCAPE BOULDER

B
L-2

5 FT. 4-RAIL POST & RAIL FENCE

D
L-2

3-STRAND BARBED WIRE SECURITY TOP

E
L-2

CHALKLINE FENCE WITH WINGED PRIVACY SLATS

F
L-2

PLANT LEGEND: TREES = 91 TOTAL

SYM	DESCRIPTION	QUANTITY	SIZE	SPACING	NOTES
1

PLANT LEGEND: SHRUBS = 88 TOTAL

SYM	DESCRIPTION	QUANTITY	SIZE	SPACING	NOTES
1

SITE LEGEND:

SYM	DESCRIPTION	NOTES
1

NOT FOR CONSTRUCTION

MESA CSG
 2030 D JIM RD., AVE. 2043-173-34-941
 GRAND JUNCTION, COLORADO 81504

LANDSCAPE LEGEND, NOTES, & DETAILS
L1.2

City of Grand Junction - Estimated Savings from CSG Subscription (rev 02.14.2014 with 2014 SRC tariff)

Yr	Subscription Value per kWh			Subscription Share (% CSG)			Aggregate Annual and Cumulative Savings					
	SRC Credit (per kWh) ¹	SA Rate (per kWh) ²	Savings (per kWh)	Total CSG Production (kWh) ³	CSG Subscrip %	kWh's Subscribed ⁴	1.5% Utility Escalation		3.0% Utility Escalation		4.5% Utility Escalation	
							Annual Savings	Cumulative Savings	Annual Savings	Cumulative Savings	Annual Savings	Cumulative Savings
1	\$ 0.17687	\$ 0.06790	\$ 0.10937	3,556,642	23.1%	824,395	\$ 90,163	\$ 90,163	\$ 90,163	\$ 90,163	\$ 90,163	\$ 90,163
2	\$ 0.18218	\$ 0.06851	\$ 0.11366	3,548,809	23.1%	820,223	\$ 91,058	\$ 181,222	\$ 93,294	\$ 183,998	\$ 95,411	\$ 185,574
3	\$ 0.18764	\$ 0.06954	\$ 0.11810	3,531,065	23.1%	816,172	\$ 91,962	\$ 273,184	\$ 96,390	\$ 279,788	\$ 100,888	\$ 286,457
4	\$ 0.19327	\$ 0.07058	\$ 0.12269	3,513,409	23.1%	812,091	\$ 92,875	\$ 366,059	\$ 99,632	\$ 379,420	\$ 106,590	\$ 393,047
5	\$ 0.19907	\$ 0.07164	\$ 0.12743	3,495,842	23.1%	808,031	\$ 93,796	\$ 459,855	\$ 102,964	\$ 482,384	\$ 112,541	\$ 505,588
6	\$ 0.20504	\$ 0.07272	\$ 0.13232	3,478,363	23.1%	803,990	\$ 94,727	\$ 554,582	\$ 106,386	\$ 588,771	\$ 118,745	\$ 624,333
7	\$ 0.21119	\$ 0.07381	\$ 0.13738	3,460,971	23.1%	799,970	\$ 95,668	\$ 650,250	\$ 109,903	\$ 698,673	\$ 125,213	\$ 749,546
8	\$ 0.21753	\$ 0.07491	\$ 0.14261	3,443,666	23.1%	795,971	\$ 96,617	\$ 746,867	\$ 113,515	\$ 812,188	\$ 131,956	\$ 881,502
9	\$ 0.22405	\$ 0.07604	\$ 0.14801	3,426,448	23.1%	791,991	\$ 97,576	\$ 844,443	\$ 117,226	\$ 929,414	\$ 138,984	\$ 1,020,486
10	\$ 0.23077	\$ 0.07718	\$ 0.15360	3,409,316	23.1%	788,031	\$ 98,544	\$ 942,987	\$ 121,038	\$ 1,050,452	\$ 146,310	\$ 1,166,796
11	\$ 0.23770	\$ 0.07834	\$ 0.15936	3,392,269	23.1%	784,091	\$ 99,523	\$ 1,042,510	\$ 124,953	\$ 1,175,405	\$ 153,945	\$ 1,320,741
12	\$ 0.24483	\$ 0.07951	\$ 0.16532	3,375,308	23.1%	780,170	\$ 100,510	\$ 1,143,020	\$ 128,975	\$ 1,304,381	\$ 161,902	\$ 1,482,643
13	\$ 0.25217	\$ 0.08070	\$ 0.17147	3,358,431	23.1%	776,269	\$ 101,508	\$ 1,244,528	\$ 133,106	\$ 1,437,487	\$ 170,193	\$ 1,652,836
14	\$ 0.25974	\$ 0.08191	\$ 0.17782	3,341,639	23.1%	772,388	\$ 102,515	\$ 1,347,043	\$ 137,349	\$ 1,574,835	\$ 178,832	\$ 1,831,668
15	\$ 0.26753	\$ 0.08314	\$ 0.18439	3,324,931	23.1%	768,526	\$ 103,533	\$ 1,450,576	\$ 141,706	\$ 1,716,541	\$ 187,834	\$ 2,019,502
16	\$ 0.27556	\$ 0.08449	\$ 0.19117	3,308,306	23.1%	764,683	\$ 104,560	\$ 1,555,136	\$ 146,181	\$ 1,862,722	\$ 197,213	\$ 2,216,715
17	\$ 0.28382	\$ 0.08586	\$ 0.19817	3,291,765	23.1%	760,860	\$ 105,598	\$ 1,660,734	\$ 150,777	\$ 2,013,499	\$ 206,983	\$ 2,423,698
18	\$ 0.29234	\$ 0.08724	\$ 0.20540	3,275,306	23.1%	757,056	\$ 106,646	\$ 1,767,380	\$ 155,496	\$ 2,168,996	\$ 217,161	\$ 2,640,859
19	\$ 0.30111	\$ 0.08865	\$ 0.21286	3,258,930	23.1%	753,270	\$ 107,705	\$ 1,875,085	\$ 160,343	\$ 2,329,339	\$ 227,763	\$ 2,868,623
20	\$ 0.31014	\$ 0.08957	\$ 0.22057	3,242,635	23.1%	749,504	\$ 108,774	\$ 1,983,859	\$ 165,319	\$ 2,494,658	\$ 238,807	\$ 3,107,430
				68,044,053		15,727,732	\$ 1,983,859		\$ 2,494,658		\$ 3,107,430	

Footnotes

- 1) Weighted average Xcel SRC credit for subscribed SG premises, based on 2014 tariff
- 2) 1.5% annual escalation
- 3) 1,786kWh/kWp and 0.5% annual PV degradation
- 4) 120% rule applied to actual consumption



Date: April 1, 2014
 Author: Shelly Dackonish
 Title/ Phone Ext: 4042
 Proposed Schedule: April 2, 2014
 2nd Reading: N/A, Emergency
Ordinance
 File # (if applicable): N/A

Attach 9
CITY COUNCIL AGENDA ITEM

Subject: Emergency Ordinance Amending Ordinance No. 4618
Action Requested/Recommendation: Amend Ordinance No. 4618 regulating certain solicitation activities in public places
Presenter(s) Name & Title: John Shaver, City Attorney

Executive Summary:

On February 19, 2014 the City Council adopted Ordinance No. 4618 regulating certain panhandling activities in public places. Enforcement of Ordinance No. 4618 has been stayed due to litigation. The City became a party to the action on or about March 25, 2014.

The proposed Emergency Ordinance amends and/or eliminates some of the restrictions on panhandling in an effort to protect the public’s interest and resources from being expended in unnecessary litigation.

Background, Analysis and Options:

Ordinance No. 4618 regulates the stopping, accosting or approaching to solicit persons in certain circumstances, including (among others) within 100 feet of an automatic teller machine, bus stop or school grounds, and where the person solicited was at-risk. It also prohibited solicitation of occupants of vehicles on an interstate or state highway, including exits and entrances to the same.

The proposed emergency ordinance would eliminate the regulation of solicitation of at-risk persons and near school grounds and reduces the distance “bubble” around bus stops and ATMs to 20 feet. The “bubble” applies only to approaching, stopping, or accosting someone within the restricted area.

The proposed emergency ordinance also eliminates the restriction applicable to state and interstate highways, except where such solicitation involves entering onto the traveled portion of the roadway to complete the transaction and/or cannot be safely accomplished outside the traffic lanes as described in Section 9.05.050 (a) and (b).

An emergency ordinance is being considered in order to protect the public resources from being expended in unnecessary litigation and so that an ordinance regulating certain intimidating, harmful, disorderly, and/or unsafe conduct can begin to be enforced.

Financial Impact/Budget:

While an exact amount cannot be determined at this time, litigation is costly and time-consuming, and the City can be liable for the plaintiffs' attorneys' fees if the plaintiffs prevail in the litigation.

Legal issues:

Legal issues are presented in the Recitals and the Legislative Declaration section of the proposed emergency ordinance. The City is fully committed to balancing the Constitutional rights of its citizens and visitors and has with this ordinance and Ordinance No. 4618 recognized those rights.

Previously presented or discussed:

Ordinance No. 4618 was adopted following several committee meetings and a full public hearing.

Attachments:

Proposed Emergency Ordinance
"Clean" version of Code Sections

ORDINANCE NO. _____

**AN EMERGENCY ORDINANCE
TO AMEND ORDINANCE NO. 4618 REGULATING
PANHANDLING ACTIVITIES IN PUBLIC PLACES**

RECITALS:

The City of Grand Junction has the authority and power pursuant to its Charter, ordinances and Colorado law, specifically C.R.S. §31-15-401, to restrain and punish loiterers and disorderly persons, to prevent and suppress disorderly conduct and disturbances and to maintain order in public places.

The City likewise has the authority and power pursuant to law to regulate the use of sidewalks, streets and parks.

Due to increased reports of aggressive panhandling, disturbances and vandalism associated with panhandling, and the opportunity for fraudulent practices by panhandlers to gain or obtain money and the fact that panhandling often creates a public safety risk on and along public roads and public places the City Council adopted Ordinance No. 4618 regulating certain panhandling activities.

Although input was requested from the American Civil Liberties Union of Colorado (ACLU) to help craft an ordinance that best balanced all interests, the ACLU instead requested that no ordinance regulating panhandling activities be adopted. After the adoption of Ordinance No. 4618, the ACLU filed a lawsuit (*Browne et al v. City of Grand Junction*, CA 14-cv-00809) challenging the ordinance.

In that lawsuit, the ACLU challenged the Ordinance as facially unconstitutional. Without any ruling on the merits of the lawsuit U.S. District Court Judge Brimmer issued a temporary restraining order restraining the enforcement of the final sentence of Section 9.05.050 of Ordinance No. 4618. No other provisions of the Ordinance were restrained; however, the Chief of Police, on advice of counsel, elected not to enforce the Ordinance pending further legal proceedings.

The City Council believes, based upon consideration of applicable case law, that Ordinance No. 4618 is constitutional on its face for, among others, the following reasons:

- (a) The City Council's interest in protecting the safety and convenience of persons using a public area is assuredly a valid government objective;
- (b) The regulations do not have to be the least restrictive or least intrusive means of serving the goals of public safety, peace and order;

- (c) The Ordinance is not based on disagreement with any message conveyed and makes no distinctions based upon the content of the message delivered; it distinguishes behavior based only upon the time, place manner in which the speakers transmit their message and not upon the message they carry. Whether the solicitation is for personal necessities of life, for a charity, for a cause, to further any idea of whatsoever kind, only the manner, time and place is regulated;
- (d) The Ordinance leaves open ample alternative communication channels and does not entirely foreclose any means of communication;
- (e) The Ordinance does not burden substantially more speech than necessary to achieve the legitimate government interests of protecting people from aggressive or unwanted solicitation behaviors or from being stopped, accosted or approached in certain public places where they have substantial privacy interests such as near ATMs, where they are less able to avoid the speech such as at bus stops, outside dining areas or public parking areas in which they are captive audiences and/or where it is unsafe to solicit;
- (f) Public buses, public bus stops, public parking garages and lots and certain state highway and interstate right-of-way areas within the City of Grand Junction are not traditional public forums; activities at those locations may appropriately be limited to specific governmental purposes;
- (g) The U.S. Supreme Court upheld a law prohibiting someone knowingly approaching another person to pass out a leaflet within 100 feet of a health care facility; therefore, the Ordinance's prohibition of accosting, stopping or approaching someone within a 100-foot "bubble" protecting privacy interests and captive audiences is consistent with applicable U.S. Supreme Court precedent.

At the February 19, 2014 public hearing the City Council discussed revisiting Ordinance No. 4618 to determine whether the balancing of interests could or should be adjusted. In that spirit, and in an effort to be good stewards of the public funds and to minimize the time and other resources expended in litigation, the City Council deems it necessary to immediately modify the some of the regulations found in Ordinance No. 4618.

The City Council further determines that:

- (1) regulating panhandling through reasonable time, place and manner restrictions and prohibiting panhandling activities done in an aggressive, threatening or coercive manner, or in a manner that puts panhandlers, motorists, pedestrians and bystanders at risk, serves to protect property, public safety and benefits the health, safety and welfare of the entire community; and

- (2) captive audiences are less capable of resisting or avoiding unwanted panhandling activities and/or have fewer means available to avoid or resist such activities; and
- (3) persons conducting banking at automated teller machines in the public ways are entitled to a reasonable measure of privacy and security as they conduct their transactions; and,
- (4) modification of the regulations set forth in Ordinance No. 4618 serves the best interests of the community and is required for the immediate preservation of the health, safety and welfare of the community.

In a continued effort to effectively balance the interests of maintaining order in public places and protecting individual rights, to ensure that an ordinance protecting the peace, welfare, health and safety of the community can be immediately enforced, and to limit the spending of time and resources of the City in needless litigation, the City Council determines Ordinance No. 4618 shall be amended to further limit the perceived intrusion on solicitation activities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

Chapter 5, Title 9 of the Grand Junction Municipal Code is amended as follows (deletions ~~struck through~~; additions underlined):

9.05.010 Legislative Declaration.

- (a) The City Council does find and declare that it is the right of every person to be secure and protected from intimidation and physical harm resulting from activities associated with panhandling.
- (b) This Ordinance is not intended to interfere with the exercise of constitutionally protected rights of freedom of expression, speech and association; and the City Council does recognize the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to lawfully associate with others.
- (c) Citizens of the City are concerned as a result of behaviors by individual persons and groups of persons who aggressively panhandle, who accost captive audiences, and who create safety risks along and on public roads, which activities are not constitutionally protected and which present a clear and present danger to public order and safety.
- (d) This Ordinance is also intended to provide for safe and orderly panhandling during times and at places which protect the safety of the public while allowing for individual expression within the boundaries of the City.

(e) This Ordinance is not intended to interfere with or limit the rights of property owners to license their premises for solicitation activities, but only to regulate activities on public property.

(f) This Ordinance regulates the stopping, accosting or approaching someone for the purpose of soliciting him or her at certain times and places and in certain ways, without regard to the content of the message for which things of value may be solicited, and is not intended to be enforced in any manner that distinguishes conduct based on the content of the message delivered.

(g) This Ordinance amends Ordinance No. 4618 on an emergency basis to protect governmental resources from being expended in litigation, and because this Ordinance limits, rather than expands, governmental intrusion on private behavior, the City Council finds that the issues were fully and sufficiently vetted in the public hearing process involved in the passage of Ordinance No. 4618.

(h) Although this Ordinance eliminates a certain previously adopted restriction on solicitation of at-risk individuals, the interests of such individuals are still subject to the protections of the Ordinance addressing unwanted or aggressive solicitation behaviors.

9.05.020 Definitions.

As used in this Ordinance the following words are defined as follows:

~~*At risk person* shall mean a natural person who is over seventy (70) or under sixteen (16) years of age, or who is a person with a disability. A *person with a disability* shall mean, for purposes of the definition of "at-risk" person, a natural person of any age who suffers from one or more substantial physical or mental impairment that renders the person significantly less able to defend against criminal acts directed toward such person than he or she would be without such physical or mental impairment(s). A *substantial physical or mental impairment* shall be deemed to include, without limitation, the loss of, or the loss of use of, a hand, foot or limb; loss of, or severe diminishment of, eyesight; loss of, or severe diminishment of, hearing; loss of, or severe diminishment in, the ability to walk; any developmental disability, psychological disorder, mental illness or neurological condition that substantially impairs a person's ability to function physically or that substantially impairs a person's judgment or capacity to recognize reality or to control behavior.~~

Knowingly shall mean, with respect to the conduct or circumstances described in this Title 9, Chapter 5, that a person is aware that such person's conduct is of that nature or that the circumstances exist. With respect to a result of such conduct, *knowingly* means that a person is aware that such person's conduct is practically certain to cause the result.

Obscene shall mean a blatantly offensive description of a sexual act or solicitation to commit a sexual act, whether or not such sexual act is normal or perverted, actual or

simulated, including but not limited to masturbation, cunnilingus, fellatio, anilingus or human excretory functions.

Obstruct shall mean to render impassible or to render passage unreasonably inconvenient or hazardous.

Panhandle /panhandling shall mean to knowingly approach, accost or stop another person in a public place and solicit that person without that person's consent, whether by spoken words, bodily gestures, written signs or other means, for money, employment or other thing of value.

9.05.030 Applicability, declaration of emergency and effective date.

City Council hereby declares that a special emergency exists and that this ordinance is necessary to ensure the preservation of the peace and the public health, safety and welfare by effectuating the Council's publicly articulated purposes as stated herein and before of adopting an ordinance for the regulation of panhandling activities in public places. In declaring a special emergency, and by and with the adoption of this ordinance, the City Council is conscientiously stewarding the public's funds by reducing, managing and minimizing legal claims. This Ordinance, immediately on its final passage, shall be recorded in the City book of ordinances kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk. The full text of the amending ordinance, in accordance with the Charter of the City of Grand Junction, is to be published in full.

This Ordinance shall apply to the City of Grand Junction. This Ordinance shall take effect ~~thirty (30) days following publication~~ immediately upon passage and the City Council further ~~authorizes publication of this Ordinance in book or pamphlet form.~~

9.05.040 General panhandling and solicitation.

It shall be unlawful for any person to panhandle

- (a) One-half (1/2) hour after sunset to one-half (1/2) hour before sunrise;
- (b) If the person panhandling knowingly engages in conduct toward the person solicited that is intimidating, threatening, coercive or obscene and that causes the person solicited to reasonably fear for his or her safety;
- (c) If the person panhandling directs fighting words to the person solicited that are likely to create an imminent breach of the peace;
- (d) If the person panhandling knowingly touches or grabs the person solicited;
- (e) If the person panhandling knowingly continues to request the person solicited for

money or other thing of value after the person solicited has refused the panhandler's initial request;

~~(f) If the person panhandling knowingly solicits an at-risk person;~~

~~(gf)~~ In such a manner that the person panhandling obstructs a sidewalk, doorway, entryway, or other passage way in a public place used by pedestrians or obstructs the passage of the person solicited or requires the person solicited to take evasive action to avoid physical contact with the person panhandling or with any other person;

~~(hg)~~ Within ~~one hundred (100)~~ twenty (20) feet of an automatic teller machine or of a bus stop;

~~(ih)~~ On a public bus;

~~(ji)~~ In a public parking garage, parking lot or other parking facility;

~~(kj)~~ When the person solicited is present within the patio or sidewalk serving area of a retail business establishment that serves food and/or drink, or waiting in line to enter a building, an event, a retail business establishment, or a theater;

~~(l) On or within one hundred (100) feet of any school or school grounds.~~

9.05.050 Panhandling and solicitation on or near public streets and highways.

It shall be unlawful for any person to panhandle or to solicit employment, business contributions or sales of any kind, or to collect money for the same, directly from the occupant of any vehicle traveling upon any public street or highway when:

(a) Such panhandling, solicitation or collection involves the person performing the activity to enter onto the traveled portion of a public street or highway to complete the transaction, including, without limitation, entering onto bike lanes, street gutters or vehicle parking areas; or

(b) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely complete the transaction.

~~Notwithstanding the foregoing in this Section 9.05.050, it shall be unlawful for any person to panhandle or to solicit or attempt to solicit employment, business, or contributions of any kind directly from the occupant of any vehicle on any highway included in the interstate or state highway system, including any entrance to or exit from such highway.~~

9.05.060 Enforcement and penalties.

Violation of any provision of this Chapter shall constitute a misdemeanor and shall be punishable in accordance with the penalties provided in GJMC 1.04.090.

9.05.070 Severability.

This Ordinance is necessary to protect the public health, safety and welfare of the residents of the City. If any provision of this Ordinance is found to be unconstitutional or illegal, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severed or severable and shall continue in full force and effect.

All other provisions of Title 9 of the Grand Junction Municipal Code shall remain in full force and effect.

PASSED AND ADOPTED as an emergency ordinance of the City Council of the City of Grand Junction, Colorado this 2nd day of April 2, 2014.

Sam Susuras
President of the Council

ATTEST:

Stephanie Tuin
City Clerk

Code Sections Amended by Emergency Ordinance No. ____ - Clean Version

9.05.010 Legislative Declaration.

(a) The City Council does find and declare that it is the right of every person to be secure and protected from intimidation and physical harm resulting from activities associated with panhandling.

(b) This Ordinance is not intended to interfere with the exercise of constitutionally protected rights of freedom of expression, speech and association; and the City Council does recognize the constitutional right of every citizen to harbor and express beliefs on any subject whatsoever and to lawfully associate with others.

(c) Citizens of the City are concerned as a result of behaviors by individual persons and groups of persons who aggressively panhandle, who accost captive audiences, and who create safety risks along and on public roads, which activities are not constitutionally protected and which present a clear and present danger to public order and safety.

(d) This Ordinance is also intended to provide for safe and orderly panhandling during times and at places which protect the safety of the public while allowing for individual expression within the boundaries of the City.

(e) This Ordinance is not intended to interfere with or limit the rights of property owners to license their premises for solicitation activities, but only to regulate activities on public property.

(f) This Ordinance regulates the stopping, accosting or approaching someone for the purpose of soliciting him or her at certain times and places and in certain ways, without regard to the content of the message for which things of value may be solicited, and is not intended to be enforced in any manner that distinguishes conduct based on the content of the message delivered.

(g) This Ordinance amends Ordinance No. 4618 on an emergency basis to protect governmental resources from being expended in litigation, and because this Ordinance limits, rather than expands, governmental intrusion on private behavior, the City Council finds that the issues were fully and sufficiently vetted in the public hearing process involved in the passage of Ordinance No. 4618.

(h) Although this Ordinance eliminates a certain previously adopted restriction on solicitation of at-risk individuals, the interests of such individuals are still subject to the protections of the Ordinance addressing unwanted or aggressive solicitation behaviors.

9.05.020 Definitions.

As used in this Ordinance the following words are defined as follows:

Knowingly shall mean, with respect to the conduct or circumstances described in this Title 9, Chapter 5, that a person is aware that such person's conduct is of that nature or that the circumstances exist. With respect to a result of such conduct, *knowingly* means that a person is aware that such person's conduct is practically certain to cause the result.

Obscene shall mean a blatantly offensive description of a sexual act or solicitation to commit a sexual act, whether or not such sexual act is normal or perverted, actual or simulated, including but not limited to masturbation, cunnilingus, fellatio, anilingus or human excretory functions.

Obstruct shall mean to render impassible or to render passage unreasonably inconvenient or hazardous.

Panhandle /panhandling shall mean to knowingly approach, accost or stop another person in a public place and solicit that person without that person's consent, whether by spoken words, bodily gestures, written signs or other means, for money, employment or other thing of value.

9.05.030 Applicability, declaration of emergency and effective date.

City Council hereby declares that a special emergency exists and that this ordinance is necessary to ensure the preservation of the peace and the public health, safety and welfare by effectuating the Council's publicly articulated purposes as stated herein and before of adopting an ordinance for the regulation of panhandling activities in public places. In declaring a special emergency, and by and with the adoption of this ordinance, the City Council is conscientiously stewarding the public's funds by reducing, managing and minimizing legal claims. This Ordinance, immediately on its final passage, shall be recorded in the City book of ordinances kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk. The full text of the amending ordinance, in accordance with the Charter of the City of Grand Junction, is to be published in full.

This Ordinance shall apply to the City of Grand Junction. This Ordinance shall take effect immediately upon passage.

9.05.040 General panhandling and solicitation.

It shall be unlawful for any person to panhandle

- (a) One-half (1/2) hour after sunset to one-half (1/2) hour before sunrise;

- (b) If the person panhandling knowingly engages in conduct toward the person solicited that is intimidating, threatening, coercive or obscene and that causes the person solicited to reasonably fear for his or her safety;
- (c) If the person panhandling directs fighting words to the person solicited that are likely to create an imminent breach of the peace;
- (d) If the person panhandling knowingly touches or grabs the person solicited;
- (e) If the person panhandling knowingly continues to request the person solicited for money or other thing of value after the person solicited has refused the panhandler's initial request;
- (f) In such a manner that the person panhandling obstructs a sidewalk, doorway, entryway, or other passage way in a public place used by pedestrians or obstructs the passage of the person solicited or requires the person solicited to take evasive action to avoid physical contact with the person panhandling or with any other person;
- (g) Within twenty (20) feet of an automatic teller machine or of a bus stop;
- (h) On a public bus;
- (i) In a public parking garage, parking lot or other parking facility;
- (j) When the person solicited is present within the patio or sidewalk serving area of a retail business establishment that serves food and/or drink, or waiting in line to enter a building, an event, a retail business establishment, or a theater.

9.05.050 Panhandling and solicitation on or near public streets and highways.

It shall be unlawful for any person to panhandle or to solicit employment, business contributions or sales of any kind, or to collect money for the same, directly from the occupant of any vehicle traveling upon any public street or highway when:

- (a) Such panhandling, solicitation or collection involves the person performing the activity to enter onto the traveled portion of a public street or highway to complete the transaction, including, without limitation, entering onto bike lanes, street gutters or vehicle parking areas; or
- (b) The person performing the activity is located such that vehicles cannot move into a legal parking area to safely complete the transaction.

9.05.060 Enforcement and penalties.

Violation of any provision of this Chapter shall constitute a misdemeanor and shall be punishable in accordance with the penalties provided in GJMC 1.04.090.

9.05.070 Severability.

This Ordinance is necessary to protect the public health, safety and welfare of the residents of the City. If any provision of this Ordinance is found to be unconstitutional or illegal, such finding shall only invalidate that part or portion found to violate the law. All other provisions shall be deemed severed or severable and shall continue in full force and effect.

THE BUSINESS INCUBATOR CENTER



THE GRAND VALLEY'S CENTER FOR ENTREPRENEURSHIP

Mesa County Enterprise Zone

Colorado State Tax Credit program that provides incentives to encourage job creation, business location, and expansion of private enterprise in targeted areas.

www.gjincubator.org

Explore. Enrich. and Expand.

970.243.5242



Intent

The Colorado Legislature created the Enterprise Zone program to promote a business friendly environment in economically distressed areas by offering state income tax credits that incentivize businesses to locate and develop in these communities as well as non-profits organizations to assist with the needs of these communities.

ENTERPRISE ZONE

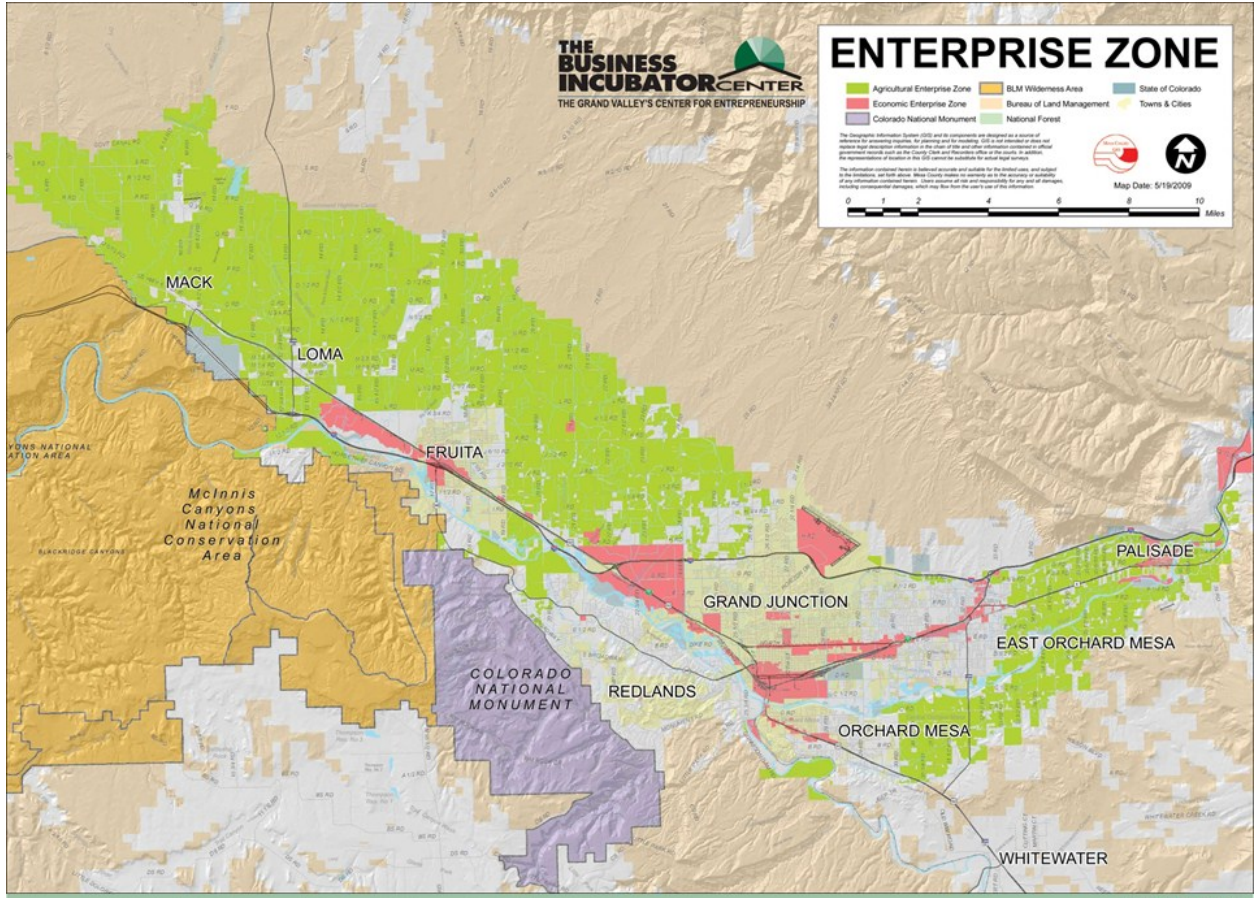
- Agricultural Enterprise Zone
- BLM Wilderness Area
- State of Colorado
- Economic Enterprise Zone
- Bureau of Land Management
- Towns & Cities
- Colorado National Monument
- National Forest

The Geographic Information System (GIS) and its contents are designed as a source of reference for research purposes. No warranty is made by the provider. GIS data is derived from a variety of government records such as the County Clerk and Recorder Office or the courts. In addition, the information is based on the GIS records as available for each year update.

The information contained herein is believed accurate and suitable for the intended uses and subject to the conditions and limitations stated. Users assume all risk and responsibility for any use of computer, including consequential damages, which may arise from the use of the information.



Map Date: 5/19/2009





Boundary

- Current map can be found by going to:
 - www.gjincubator.org
 - Enterprise Zone
 - EZ Map
- For a geographic area to be added to the Enterprise Zone boundary, it must qualify on one of two distress criteria per statute (C.R.S. 39-30-103).
 - Criteria determined by most recent Census / American Factfinder data
 - 125% of state unemployment
 - 75% of state per-capita income
 - No current exception possibility



Boundary – Steps to a Boundary Amendment

- 1) Inquiry is made regarding a geographic area's ability to be added to the Enterprise Zone boundary.
- 2) Census information is pulled and reviewed.
 - Qualifying Data is reviewed at numerous levels to ensure every dataset is taken into consideration.
- 3) As an urban Enterprise Zone, no more than 115,000 people can reside within the Enterprise Zone boundary.
 - This is primarily the reason the Mesa County Enterprise Zone boundary has so many areas carved out.
 - Beginning 2012, the smallest geographic area that can be added to the Enterprise Zone boundary is at the block level. As such, we must add the entire population of said block with a boundary amendment.



Boundary – Steps to a Boundary Amendment

- 4) If the geographic area meets one or both of the distress criteria, a proposal is prepared and submitted for review by the Mesa County Enterprise Zone committee.
- 5) If the Boundary amendment proposal is approved for support Mesa County Enterprise Zone committee, it is presented to the Mesa County Commissioners for approval of support.
- 5) If the project is approved for support from the Mesa County Commissioners, it is then presented to the EDC for final approval .
 - The EDC has overall authority for approving/denying an Enterprise Zone boundary amendment proposal.



Boundary – HB 13-1142

Moved the statewide Enterprise Zone boundary review from commencing January 1, 2016 to commencing January 1, 2014.

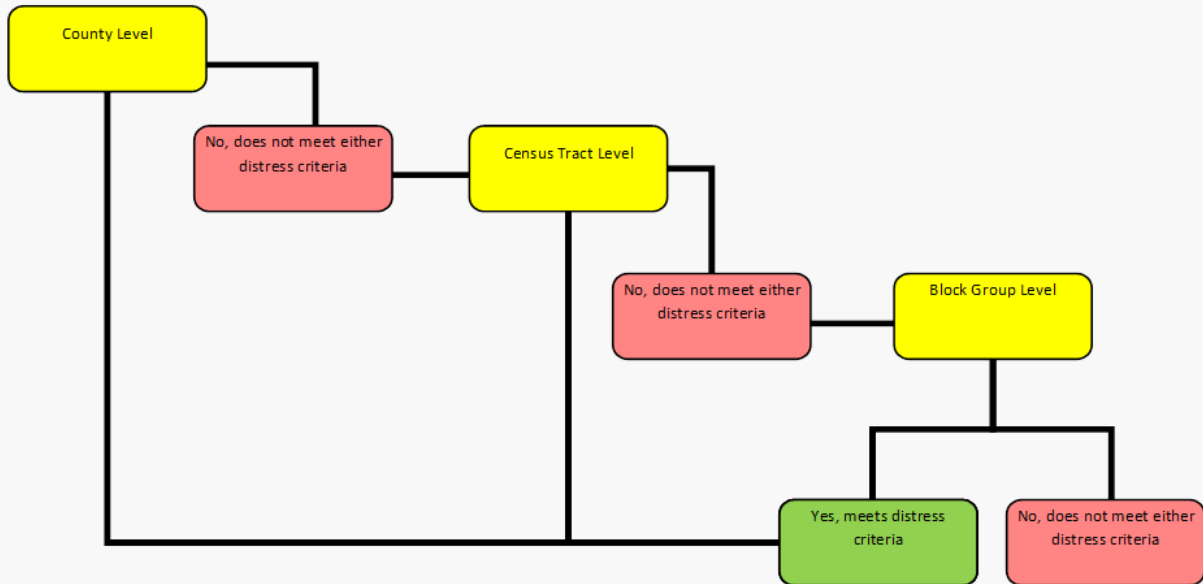
- Data released by the American Community Survey mid-December
- Smallest data set available at the block group level

UPDATED February 12, 2014

- The State Enterprise Zone Manager with direction from the Governors office has adjusted the timeframe for the boundary review.
 - 2014 will now be utilized to prepare a timeline and plan for the statewide boundary review.
 - Data released by the American Community Survey mid-December as well as DOLA will be used. This will include 5-year averages from 2008-2013.
 - New boundary based on qualifications expected to be implemented January 1, 2016.



Boundary – Levels of Data Review





Boundary – Levels of Data Review

Census Tract

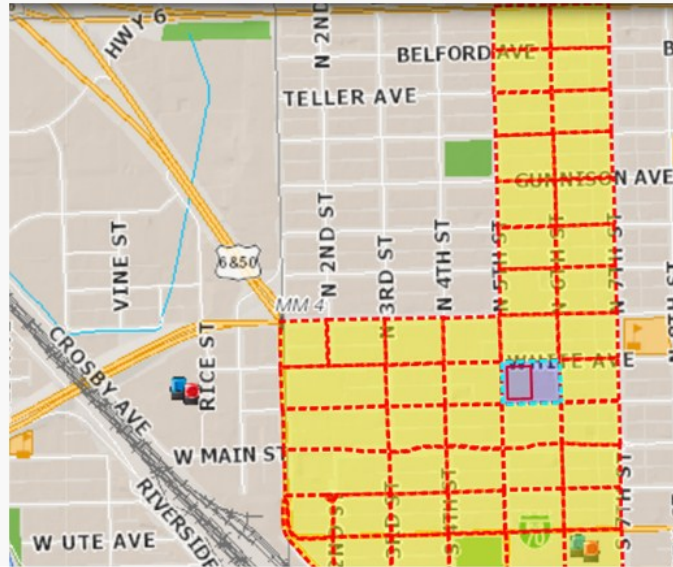


www.gjincubator.org



Boundary – Levels of Data Review

Block Group



www.gjincubator.org

Explore, Enrich, and Expand.

970.243.5242



Enterprise Zone

Contribution
Projects

Business Tax
Credits



Contribution Projects

- **Donors** who contribute to approved Enterprise Zone Contribution Projects receives Colorado State tax credits.
 - A taxpayer who makes a contribution to an approved Enterprise Zone contribution project may claim a state tax credit: 25% for cash donations; 12.5% for in-kind donations.
- Approved Enterprise Zone Contribution Projects are listed on the website.
 - www.gjincubator.org
 - Enterprise Zone
 - Contribution Projects



Contribution Projects— New Project Approval Process

1) To be considered for Enterprise Zone Contribution Project status, a non-profit must first qualify based on one of three categories determined by the EDC.

- **Homeless Assistance**
 - Must have a job training component and referral network
- **Economic Development**
 - Business Assistance
 - Job Training
 - Infrastructure
 - Marketing
- **Community Development**
 - Must contribute indirectly to job creation /preservation within the Enterprise Zone
 - Must have a primary goal to bring outside dollars to the area



Contribution Projects— New Project Approval Process

2) A completed project proposal form is then presented to the Mesa County Enterprise Zone committee for review.

3) If the proposal is approved by the Mesa County Enterprise Zone committee, it is presented to the Mesa County Commissioners for their support.

4) If the project is approved for support from the Mesa County Commissioners, it is then presented to the EDC for final approval .

- The EDC has overall authority for approving/denying a Contribution Project.



Contribution Projects– What's New

- SB 10-162
 - All contribution projects are **required** to include the donor Social Security Number or Taxpayer ID on the DR0075 prior to submitting the form for approval.
 - State Income Taxes will be required to be filed electronically for donors claiming a Colorado Enterprise Zone tax credit.
 - If you would like an Enterprise Zone tax credit and make a donation to a qualified contribution project, help them out and provide your Social Security Number, Tax ID Number, or Colorado Account Number when making the donation.

www.gjincubator.org



Business tax credits

For Tax Years Beginning on or before 12/31/13

- **Businesses** located in the Enterprise Zone may apply for the following Colorado State tax incentives:
 - 3% Investment Tax Credit
 - \$500 NBF Job Creation Tax Credit
 - \$200 NBF Job Tax Credit for Employer Sponsored Health Insurance
 - 10% Job Training Credit
 - Credit to Rehabilitate Vacant Buildings
 - Research and Development Tax Credit
 - Commercial Vehicle Investment Tax Credit



Business tax credits

For Tax Years Beginning on or after 1/1/14

- **Businesses** located in the Enterprise Zone may apply for the following Colorado State tax incentives:
 - 3% Investment Tax Credit with \$750,000 cap
 - \$1,100 ~~NBF~~ Job Creation Tax Credit
 - \$1,000 ~~NBF~~ Job Tax Credit for Employer Sponsored Health Insurance
 - 12% Job Training Credit
 - Credit to Rehabilitate Vacant Buildings
 - Research and Development Tax Credit
 - Commercial Vehicle Investment Tax Credit



Investment Tax Credit

- ...a Colorado State Tax Credit of 3% of an qualified investment in (IRS) Section 38 property.
- The purchase of new equipment for a business: a computer, a point of sale system, kitchen equipment, manufacturing machinery, an agricultural irrigation system or other tangible personal property that is used to generate revenue may be eligible.



Job Training Credit

- ... a credit of 12% of a businesses total current year investment in a qualified job training program (i.e. a structured training or basic education program to improve the job skills of employees).
- Examples of such investments are: expensed equipment, supplies, training staff wages or fees, training contract costs, temporary space rental, and travel expenses (wages of employees being trained are not includible expenses.).




Research & Development

- ... a credit of 3% based on the increase of a company's research and experimental expenditures over the average of the previous two years.
- Qualified research must satisfy three criteria:
 - It must be technological in nature.
 - It must be useful in the development of a new or improved product or component of the business.
 - It must utilize the process of experimentation.
- The total amount of the calculated credit must be divided equally over four years.




Businesses tax credits – What's New

- SB 10-162
 - **Pre-Certification** – Effective January 1, 2012 
 - A business that plans to earn an EZ tax credit must receive pre-certification **each year** prior to earning the credit and then submit the tax form to their local EZ Administrator for final certification after earning the credit.
 - **State Income Taxes required to be filed electronically**
 - Mesa County requires all Business Tax Credit Forms to be completed electronically by either visiting the hyperlink on our webpage at <http://www.gjincubator.org/enterprise-zone/business-tax-credits/> or directly to the site at <https://www.colorado.gov/apps/oedit/enterpriseCert/home.jsf> .
 - Once a business has received the final “certified” Enterprise Zone tax credit form, the business that is claiming the EZ tax credit will be required to file their income taxes electronically.

www.gjincubator.org




Businesses tax credits – What's New

- **HB 13-1142**– effective January 1, 2014 
 - Sets an Investment Tax Credit cap of \$750,000 and extends the carryover period to 14 years.
 - Increases *NBF Jobs credit to \$1,100 per job.
 - Increases *NBF Health Insurance credit to \$1,000 for each NBF employee that is insured under a health insurance plan and 50% or more of the total cost of the plan is paid by the employer.
 - Only for the first two full income tax years a business operates in the Enterprise Zone Boundaries.
 - Increases the Training Credit to 12% for qualified training programs.
 - Requires the Colorado Enterprise Zone boundary be reviewed and amended in 2014.



Businesses tax credits – What's New

- **HB 13-1265**– effective January 1, 2014 
- Eliminates the New Business Facility requirement for
 - Jobs Credit
 - Health Insurance Credit



Additional help

- Want to know more about the Mesa County Enterprise Zone?
 - Kjersti Litzelman – klitzelman@gjincubator.org
 - (970) 243-5242
- For detailed questions:
 - www.advancecolorado.com/ez
 - Colorado Department of Revenue
(303) 238-SERV (7378)

National Healthcare Decisions Day



Continuing the Conversation

End-of-life decisions can be difficult. This symposium will explore ways to discuss end-of-life issues with family, friends and your doctor.

Wednesday, April 16, 2014

Keynote Physician Presentation • Interactive Participant Discussions

Two Sessions Scheduled Wednesday, April 16,
9:00 a.m. - 11:00 a.m. (check-in begins at 8:30)
5:30 p.m. - 7:30 p.m. (check-in begins at 5:00)

**Hosted by St. Mary's Hospital & Regional Medical Center
Saccomanno Education Center – 5th Floor**

Jointly sponsored by

**Advance
Care
Planning
Task Force**

Pre-registration is required – seating is limited.
Registration deadline is April 14, 2014. Register by calling
Western Colorado 211 Toll-free (888) 217-1215
from 8:00 a.m. – 5:00 p.m.

In lieu of a registration fee, we ask that attendees
bring non-perishable food items for local food banks.

MEDICAL DURABLE POWER OF ATTORNEY FOR HEALTHCARE

By this document I intend to create a **Medical Durable Power of Attorney for Healthcare**, which shall take effect immediately upon signing and the authority shall not be affected by my subsequent incapacity to make my own health care decisions.

Appointment of Primary Agent	<p>I, _____, the principal, hereby revoke any existing Medical Durable Power of Attorney for Healthcare and appoint: (Print or type your name)</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Primary Agent</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Agent's Home Address</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Agent's Home Telephone Number/Work Telephone Number</p> <p>as my Agent to make health care decisions for me if and when I am unable to make my own health care decisions.</p>
Successor Agents	<p>If my primary Agent is not available at the time a decision is to be made or is unable to act as my Agent, then I appoint the following individual(s) to serve in the order listed below:</p> <p>2. Name: _____</p> <p style="padding-left: 40px;">Home Address: _____</p> <p style="padding-left: 40px;">Telephone numbers: _____</p> <p>3. Name: _____</p> <p style="padding-left: 40px;">Home Address: _____</p> <p style="padding-left: 40px;">Telephone numbers: _____</p>
Duties of Agent	<p>This document gives my Agent the absolute discretion to give, withhold or withdraw consent, to any health care, treatment, procedure or test, including surgery and the withdrawal of artificial nutrition and hydration. My Agent also has the authority to talk with health care personnel; obtain copies of my medical records; employ or discharge health care personnel; grant releases to hospital staff, physicians, nurses or other personnel who rely on my Agent's instructions; make arrangements for any hospital, nursing home or similar establishment; make transportation and residential arrangements; and sign forms necessary to carry out those decisions. The authority conferred upon my agent shall eliminate the need for appointment of a guardian. However, should any proceeding commence for appointment of a guardian, I nominate my agent to serve as guardian without bond.</p>
Basis for Decisions	<p>I realize that my healthcare Agent may need to make difficult decisions for me. I want my healthcare Agent to make decisions in accordance with the instructions I have made known to my Agent. If my Agent does not know what I would decide, then my Agent shall make the decision he or she thinks is in my best interests</p>

the conversation project
in boulder county

(303) 442-0436, ext. 133

info@theconversationprojectinboulder.org

www.theconversationprojectinboulder.org

Your Conversation Starter Kit

The Conversation Project is dedicated to helping people talk about their wishes for end-of-life care.

We know that no guide and no single conversation can cover all the decisions that you and your family may face. What a conversation can do is provide a shared understanding of what matters most to you and your loved ones. This can make it easier to make decisions when the time comes.

the conversation project  **Institute for
Healthcare
Improvement**

Created by The Conversation Project and the Institute for Healthcare Improvement

This Starter Kit doesn't answer every question, but it will help you get your thoughts together, and then have the conversation with your loved ones.

You can use it whether you are getting ready to tell someone else what you want, or you want to help someone else get ready to share their wishes.

Take your time. This kit is not meant to be completed in one sitting. It's meant to be completed as you need it, throughout many conversations.

Step 1: Get Ready	1
Step 2: Get Set	3
Step 3: Go	6
Step 4: Keep Going	9

Copyright © 2013 The Conversation Project

All rights reserved. Individuals may photocopy these materials for educational, not-for-profit uses, provided that the contents are not altered or condensed in any way and that proper attribution is given to The Conversation Project, including its web address theconversationproject.org, as the source of the content. These materials may not be reproduced for commercial, for-profit use in any form or by any means, or republished under any circumstances, without the written permission of The Conversation Project.

Step 1: Get Ready

There are a million reasons to avoid having the conversation. But it's critically important. And you can do it.

Consider the facts.

60% of people say that making sure their family is not burdened by tough decisions is "extremely important"

56% have not communicated their end-of-life wishes

Source: Survey of Californians by the California HealthCare Foundation (2012)

70% of people say they prefer to die at home

70% die in a hospital, nursing home, or long-term-care facility

Source: Centers for Disease Control (2005)

80% of people say that if seriously ill, they would want to talk to their doctor about end-of-life care

7% report having had an end-of-life conversation with their doctor

Source: Survey of Californians by the California HealthCare Foundation (2012)

82% of people say it's important to put their wishes in writing

23% have actually done it

Source: Survey of Californians by the California HealthCare Foundation (2012)

One conversation can make all the difference.

Step 2: Get Set

Now, think about what you want for end-of-life care.

What matters to me is _____.

Start by thinking about what's most important to you. What do you value most?

What can you not imagine living without?

Now finish this sentence:

What matters to me at the end of life is _____.

Sharing your "What matters to me" statement with your loved ones could be a big help down the road. It could help them communicate to your doctor what abilities are most important to you—what's worth pursuing treatment for, and what isn't.

Where I Stand scales

Use the scales below to figure out how you want your end-of-life care to be.

Circle the number that best represents your feelings on the given scenario.

As a patient...

1	2	3	4	5
I only want to know the basics				I want to know as much as I can
1	2	3	4	5
Ignorance is bliss				I want to know how long I have to live
1	2	3	4	5
I want my doctors to do what they think is best				I want to have a say in every decision

Look at your answers.

What kind of role do you want to play in the decision-making process?

How long do you want to receive medical care?

1	2	3	4	5
I want to live as long as possible, no matter what				Quality of life is more important to me than quantity
I'm worried that I won't get enough care				I'm worried that I'll get overly aggressive care
I wouldn't mind being cared for in a nursing facility				Living independently is a huge priority for me

Look at your answers.

What do you notice about the kind of care you want to receive?

How involved do you want your loved ones to be?

1	2	3	4	5
I want my loved ones to do exactly what I've said, even if it makes them a little uncomfortable at first			I want my loved ones to do what brings them peace, even if it goes against what I've said	

1	2	3	4	5
When the time comes, I want to be alone			I want to be surrounded by my loved ones	

1	2	3	4	5
I don't want my loved ones to know everything about my health			I am comfortable with those close to me knowing everything about my health	

What role do you want your loved ones to play? Do you think that your loved ones know what you want or do you think they have no idea?

What do you feel are the three most important things that you want your friends, family and/or doctors to understand about your wishes for end-of-life care?

1. _____
2. _____
3. _____

Step 3: Go

When you're ready to have the conversation, think about the basics.

Mark all that apply:

Who do you want to talk to? Who do you trust to speak for you?

- | | | |
|---|--|---------------------------------------|
| <input type="checkbox"/> Mom | <input type="checkbox"/> Partner/Spouse | <input type="checkbox"/> Doctor |
| <input type="checkbox"/> Dad | <input type="checkbox"/> Minister/Priest/Rabbi | <input type="checkbox"/> Caregiver |
| <input type="checkbox"/> Child/Children | <input type="checkbox"/> Friend | <input type="checkbox"/> Other: _____ |
-

When would be a good time to talk?

- | | | |
|--|--|---------------------------------------|
| <input type="checkbox"/> The next big holiday | <input type="checkbox"/> Before my next big trip | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> At Sunday dinner | <input type="checkbox"/> Before I get sick again | |
| <input type="checkbox"/> Before my kid goes to college | <input type="checkbox"/> Before the baby arrives | |
-

Where would you feel comfortable talking?

- | | | |
|---|--|---------------------------------------|
| <input type="checkbox"/> At the kitchen table | <input type="checkbox"/> On a walk or hike | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> At a cozy café or restaurant | <input type="checkbox"/> Sitting in a garden or park | |
| <input type="checkbox"/> On a long drive | <input type="checkbox"/> At my place of worship | |
-

What do you want to be sure to say?

If you wrote down your three most important things at the end of Step 2, you can use those here.

How to start

Here are some ways you could break the ice:

- "I need your help with something."
- Remember how someone in the family died—was it a "good" death or a "hard" death? How will yours be different?
- "I was thinking about what happened to _____, and it made me realize..."
- "Even though I'm okay right now, I'm worried that _____, and I want to be prepared."
- "I need to think about the future. Will you help me?"
- "I just answered some questions about how I want the end of my life to be. I want you to see my answers. And I'm wondering what your answers would be."

What to talk about

- When you think about the last phase of your life, what's most important to you? How would you like this phase to be?
- Do you have any particular concerns about your health? About the last phase of your life?
- Who do you want (or not want) to be involved in your care? Who would you like to make decisions on your behalf if you're not able to? (*This person is your health care proxy.*)
- Would you prefer to be actively involved in decisions about your care? Or would you rather have your doctors do what they think is best?
- Are there any disagreements or family tensions that you're concerned about?
- Are there circumstances that you would consider worse than death? (*Long-term need of a breathing machine or feeding tube, not being able to recognize your loved ones*)
- Are there important milestones you'd like to meet if possible? (*The birth of your grandchild, your 80th birthday*)

- Where do you want (or not want) to receive care? (*Home, nursing facility, hospital*)
 - What kinds of aggressive treatment would you want (or not want)? (*Resuscitation if your heart stops, breathing machine, feeding tube*)
 - When would it be okay to shift from a focus on curative care to a focus on comfort care alone?
 - What affairs do you need to get in order, or talk to your loved ones about? (*Personal finances, property, relationships*)
-

This list doesn't cover everything you may need to think about, but it's a good place to start. Talk to your doctor or nurse if you're looking for more end-of-life care questions.

Remember:

- Be patient. Some people may need a little more time to think.
- You don't have to steer the conversation; just let it happen.
- Don't judge. A "good" death means different things to different people.
- Nothing is set in stone. You and your loved ones can always change your minds as circumstances shift.
- Every attempt at the conversation is valuable.
- This is the first of many conversations—you don't have to cover everyone or everything right now.

Now, just go for it!

Each conversation will empower you and your loved ones. You are getting ready to help each other live and die in a way that you choose.

Step 4: Keep Going

Congratulations!

Now that you have had the conversation, here are some legal and medical documents you should know about. Use them to record your wishes so they can be honored when the time comes.

- **Health Care Planning (ACP):** the process of thinking about your wishes—exactly what you have been working on here.
- **Advance Directive (AD):** a document that describes your wishes.
- **Health Care Proxy (HCP):** identifies your health care agent (often called a “proxy”), the person you trust to act on your behalf if you are unable to make health care decisions or communicate your wishes. In some states, this is called the Durable Power of Attorney for Health Care. This is probably the most important document. Make sure you have many conversations with your proxy.
- **Living Will:** specifies which medical treatments you want or don’t want at the end of your life, or if you are no longer able to make decisions on your own (e.g. in a coma).

You can find more information about these documents from the link in the “Keep Going” section of the website Starter Kit at www.TheConversationProject.org.

Remember, this was the first of many conversations.

You can use the questions below to collect your thoughts about how your first talk went, and then look back to them when you prepare for future conversations.

Is there something you need to clarify that you feel was misunderstood or misinterpreted?

Who do you want to talk to next time? Are there people who should hear things at the same time (like siblings who disagree about everything)?

How did this conversation make you feel? What do you want to remember? What do you want your loved ones to remember?

What do you want to make sure to ask or talk about next time?

We hope you will share this Starter Kit with others. You have helped us get one conversation closer to our goal: that everyone's end-of-life wishes are expressed and respected.